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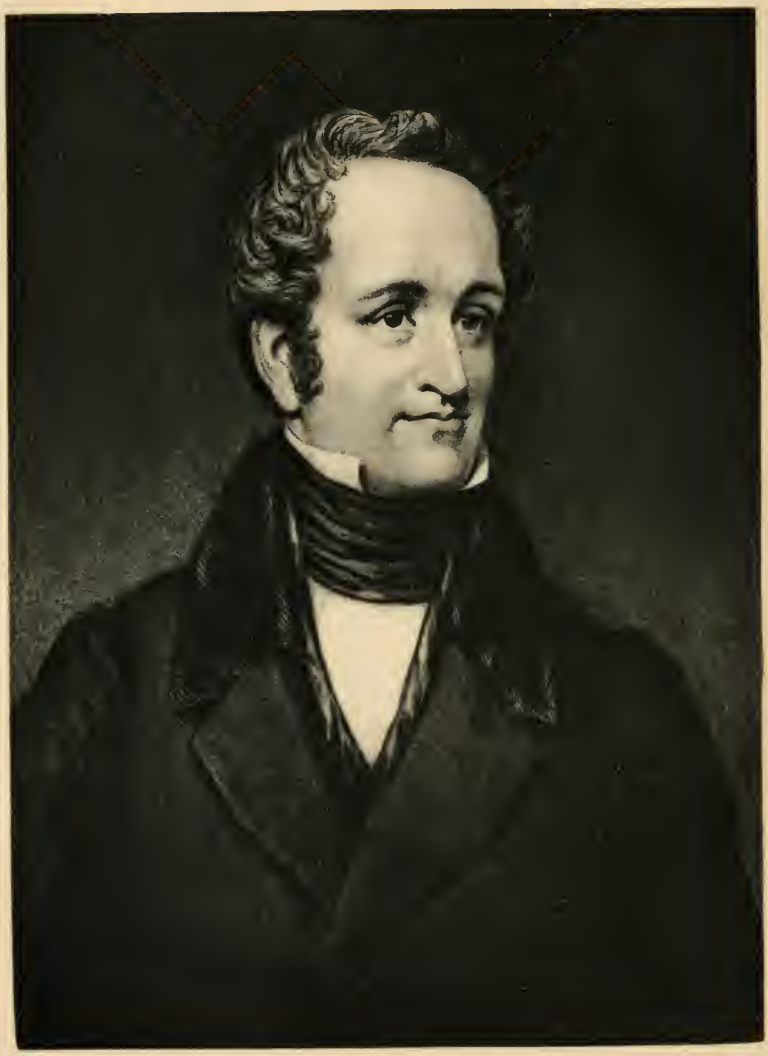

HENRY HALLAM.

Photogravure from a steel engraving.

HISTORY OF EUROPE
DURING THE MIDDLE AGES

BY

HENRY HALLAM

WITH A SPECIAL INTRODUCTION BY

ARTHUR RICHMOND MARSH, A.B.

PROFESSOR OF COMPARATIVE LITERATURE

AT HARVARD UNIVERSITY

REVISED EDITION

VOLUME I

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SPECIAL INTRODUCTION

IT is now more than three-quarters of a century since the first edition of Hallam's "Middle Ages" appeared. The author's volume of supplemental notes was published thirty years later; but this is already more than fifty years ago. During these two generations vast advances have been made in the study of almost every aspect of the mediæval period. Whole sciences, concerning themselves largely with it—as, for example, the science of Romance Philology—have been born. New methods of studying history and institutions have been elaborated. Immense numbers of documents, literary and historical, that were practically buried in uncatalogued archives and libraries, have been brought to the light of day, and made accessible to all scholars. Multitudes of obscurities that made the middle ages literally a period of darkness have been cleared up, and the modern student may ascertain almost as much about the political, social, and literary conditions of the time, as about those of any portion of human history, except the most recent. Perhaps most important of all, the general attitude of men's minds towards the subject of mediæval studies has profoundly changed. The passion for romantic glamor that found its clearest expression in the poetry of the German Tieck and his followers, but that to some extent affected all men's minds, has given way to the curiosity of science and the intellectual passion for exact knowledge. Much has been gained; something, too, has been lost. But it is now impossible for anyone to approach the matter in quite the same spirit as did the men of the first years of the century.

In view of all this, it is a natural question why it should be worth while to issue again a book which from the nature of the case can give no account of the results obtained by so long a period of systematic study. In the case of most books there could be but one answer to this question—it would not be worth while to republish them. But with regard to the pres-

ent work this is very far, indeed, from being true. And the explanation in a word is that the book is a classic, and that as such it has qualities that make it hardly less valuable than when it first appeared.

No one has yet hit upon a receipt for the composition of a classic, or has been able to give a really adequate explanation of the phenomenon when a classic has actually been composed. It would be useless then to try to show all the causes that have combined to give to Hallam's work this notable quality. It is, however, possible to indicate some of the reasons why it is still worth while for the general reader and, indeed, for the technical student to use the book. Undoubtedly, the most fundamental reason of all is that Hallam, despite the relative insufficiency of the material at his disposal, was yet able to discern the permanent sources of interest in that material, and to set these forth with enough illustration to impress them upon the mind as truly essential. His cool and sober intelligence was not misled by the romantic hue and cry about him; the very lack of imagination that has sometimes been made a reproach to him kept him from following poetic will-o'-the-wisps; and he was too sane to suppose himself to be the prophet of a new gospel, whether in literature, society, or religion. He wished his book "to exhibit a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the middle ages." The phrase is significant, particularly in view of the time when it was written. And the best of it is that the verdict of seventy-five years must be that he succeeded in doing what he undertook to do.

To make this clear must be the purpose of this brief introduction. And first of all, we may remark that one fundamental truth, only now fairly established for the world at large, seems to have been perfectly clear to Hallam from the start. This truth is that in the middle ages we should not see a kind of gap in nature, a period of barbarism and intellectual decay, thrust in between the civilization of the ancients and that of the moderns. This was the view of the men of the Renaissance, and has been that of all the children of the Renaissance down to our own day. But an idea more full of untruth was surely never promulgated. The real fact is that in the middle ages we are to see the beginnings of ourselves. We are the per-

fectly legitimate descendants of mediæval men, and we have no ideas, no institutions, no manners that are not shot through and through with thread of mediæval spinning. To study the middle ages then is not to spend our time upon what is remote, and for that reason an object of purely intellectual curiosity, like the culture of the ancient Egyptians or of the Assyrians. Rather it is to ascertain the sources and history of innumerable practices and habits of mind that are still very much alive and concern us in our daily walks of life. This all-important fact Hallam seems clearly to have discerned; and that he did so is one of the chief causes of the permanent value of his book.

Looking at the subject from this point of view, it is obvious that what the student of the middle ages needs first to know about is the larger political movements of the time. And here one all-important phenomenon must attract the attention of an inquirer who desires to be "philosophical." The key-note to mediæval history is the fact that only after the decline and fall of the Roman Empire did one—and perhaps we may say, two —of the great European races find an opportunity to participate in the work of civilization. During the classical time the Greeks and Romans held what may be called a monopoly of culture. Yet in point of numbers, and in some other important respects, they were entirely over-matched by the two great races that lay to the north of them—the Celts and the Germans. These "barbarians," to use the Greek and Roman term, had also in due time their contribution to make to the progress of mankind, if only they could find the chance. And in the middle ages we have the truly magnificent spectacle of their success. The Germans, to be sure, far outweigh the Celts in the importance of their accomplishment. Modern Europe, as we know it, is, in the main, the ancient world Germanized. But, here and there, we can see traces of the Celt; and he would be a careless observer who failed to give heed to these. Still, in the main, what the student needs to have firmly fixed in his mind is that the evolution of mediæval society, in all its various aspects, can best be comprehended as the fusion of ancient with Germanic culture. And the countries in which this process can be most fully observed are the most important for the student to know about. Undoubtedly these are France and England—France even more than England, but both to

a striking degree. It is in these countries that the most significant and far-reaching political, social, and intellectual achievements of the middle ages were accomplished. These are the countries, too, which throughout modern history have occupied a position of scarcely interrupted ascendancy in determining the course of modern culture. Italy, Spain, Germany proper, have all had their moments of political or intellectual authority; but in the long run it is France and England that assert the permanent right of larger control over the culture of modern men.

To France and England, then, Hallam very rightly gave much the largest amount of attention in his survey of the middle ages. He desired his readers to follow in the first of these countries the development of those notions of social organization which, in dealing with the mediæval period, we commonly call feudal, but which are essentially the basis of modern social relations as a whole, despite the effort of our own century to rehabilitate the ancient conception of human equality. In the other country, England, he drew the picture of the beginnings and earlier evolution of that new conception of the function of government, and of the rights and obligations of the subject with regard to his government, which has resulted in the English constitution of to-day, and in the method of English government wherever the English race exists. As a setting for these larger movements, he gave, indeed, what was essential concerning the growth and decay of dynasties, the territorial changes, the internal and external wars, the complicated political relations, that attended the course of both these great nations. But the attentive reader will easily see that to Hallam these are but the circumstance, not the ultimate reality, of the history of the two peoples.

The history of France and England, however, cannot be properly understood without some reference to the other countries of Europe. Moreover, these countries, quite apart from their relations to France and England, have much in their history that is significant and enlightening. So we find in Hallam's book the main lines of their development. Naturally, detail is here much less abundant, and the complexities of events are more rapidly and summarily treated. Italy, as she ought, gets the largest space, both because her influence on mediæval and modern culture has been greatest, and because such phe-

nomena as the growth of her free cities, living by commerce, have immediate interest for the modern reader. But Germany, Spain, and even Greece are not neglected; and the one non-European power than has materially affected the modern world, that of the Saracens, is sufficiently sketched to serve the purpose of those who would know the really important forces that have determined the course of European history.

Finally, no account of the middle ages or of the origins of the modern world would be complete without a survey of the activities of the one great non-national, and for that reason most steadily unifying and civilizing, institution of the period, the Church. Here we have to seek the explanation, not merely of the religious development of Europe, but also of many of the most important political, social, and intellectual tendencies of modern men. It would be hard to find a fundamental and essential element in our culture that has not been intimately affected at some time in its evolution by the powerful influence of the sentiment, the doctrine, or the ecclesiastical polity of the most venerable form of organized Christianity. Hallam, then, was in duty bound to describe the significant features of this great institution, as he found it in the middle ages, its period of most complete ascendancy over the human mind. He did this, on the whole, calmly, and without partisan zeal or prejudice. He writes, of course, as a Protestant, having slight sympathy for Ultramontane tendencies, and not inclined to spare what he regards as ecclesiastical abuses. But perhaps it is not on these grounds that a sincere Catholic would have most reason to complain. Hallam's most serious deficiencies arise not from his lack of sympathy for the Church, but from his indifference to theology and, indeed, to philosophy (in the technical sense) in all their forms. Obviously, a writer to whom the efforts of the human spirit to give an account of itself, and of its relations to the universe and God, appear comparatively meaningless, must always seem to those who care for the deeper significance of Christian history to have missed the real point. Against this criticism Hallam can hardly be defended. On the other hand, it can truly be said that he recognized the intimate connection between the polity of the Church and the political and social institutions of all the countries he was describing.

The larger constituent elements of mediæval history and

culture thus have all a place in Hallam's pages. Yet even here the merits of his book do not end. The competent scholar is struck, as he reads it, with the clearness of the author's perception of the importance of matters that do not belong to what may be called the picturesque side of history—that is, of history as it is too generally conceived. Thus he had always a keen eye for economic conditions; and in this respect was almost two generations in advance of most of his contemporaries. In our own time, we have seen a vast development of the study of the economic history of Europe; most of our universities now have professors who devote themselves to nothing else, and of books on the subject there is no end But this was not so at all when Hallam wrote. Few men then would have felt this to be an essential matter in the historical treatment of a period. Hallam did, and it is greatly to his credit. So, too, he saw that social life and manners are more than the mere background of history. In a sense, they are history itself; and political events do but illustrate them. The chapters in Hallam's book dealing with these matters might now be greatly enlarged in the light of documents, particularly literary, that are available to us, yet Hallam said little on the subject that was not judicious or that needs complete restatement.

It may, then, fairly be said that the attentive reader can still obtain from this work a general view of those essential features of the middle ages that must be borne in mind by all who desire really to know the period. Details without number are available, to be later fitted into the scheme thus obtained. But all of us have reason to be grateful to the man who, in any field of studies, can show us the lines of permanent and profitable interest. Such men are all too few, and their work does not easily become outworn.

Arthur Richmond Marsh.

BIOGRAPHICAL SKETCH OF HALLAM

HENRY HALLAM was born at Windsor, on July 9, 1777. He was the only son of Dr. John Hallam, Canon of Windsor from 1775 to 1812, and Dean of Bristol from 1781 to 1800, a man of high character, and well read in literature. The Hallams had long been settled at Boston, in Lincolnshire, and one member of the family was Robert Hallam, Bishop of Salisbury. Hallam's mother, a sister of Dr. Roberts, Provost of Eton, was a woman of much intelligence and delicacy of feeling.

Hallam was a precocious child. He is said to have read many books when four years old, and is credited with having composed sonnets at ten. He was at Eton from 1790 to 1794, and some of his verses were published in the "Musæ Etonienses" in 1795. Afterward he was at Christ Church, Oxford, and was graduated B.A. in 1799. He was called to the bar, and practised law for some years on the Oxford circuit. His father died in 1812, leaving him estates in Lincolnshire. He was early appointed to a commissionership of stamps, a post with a good salary and light duties. In 1807 he married Julia, daughter of Sir Abraham Elton, of Clevedon Court, Somerset.

His independent means enabled him to withdraw from legal practice and devote himself to the study of history. After ten years of assiduous labor he produced, in 1818, his first great work, "A View of the State of Europe During the Middle Ages," which immediately established his reputation. A supplementary volume of "Notes" was published in 1848. "The Constitutional History of England from the Accession of Henry VII. to the Death of George II.," followed in 1827. Before the completion of his next work he was deeply affected by the death of his eldest son, Arthur Henry Hallam, in 1833. His other son, Henry Fitzmaurice Hallam, died in 1850. "I have," he wrote, "warnings to gather my sheaves while I can."

He fulfilled his purpose by finishing "The Introduction to the Literature of Europe in the Fifteenth, Sixteenth, and Seventeenth Centuries," published during 1837 and 1838.

During the preparation of these works he lived a studious life, interrupted only by occasional travels. He was familiar with the best literary society of the time, well known to the Whig magnates, and a frequent visitor to Holland House and Bowood. His name is often mentioned in memoirs and diaries of the time, and always respectfully, although he never rivalled the conversational supremacy of his contemporaries, Sydney Smith and Macaulay. He took no part in active political life. As a commissioner of stamps he was excluded from Parliament, and after his resignation did not attempt to procure a seat. After the death of his son Henry, he gave up the pension of £500 (granted, according to custom, upon his resignation), despite remonstrances upon the unusual nature of the step.

Hallam's later years were clouded by the loss of his sons. His domestic affections were unusually warm, and he was a man of singular generosity in money matters. Considering his high position in literature and his wide acquaintance with distinguished persons, the records of his life are comparatively few. He was warmly loved by all who knew him, but his dignified reticence and absorption in exacting researches prevented him from coming often under public notice. He died peacefully, after many years of retirement, on January 21, 1859.

Hallam had eleven children, seven of whom died in infancy. The early demise of his two promising sons, Arthur and Henry, has been referred to above. His daughter, Ellen, died in 1837, and Julia married Captain Cator, afterward Sir John Farnaby Lennard. Hallam had one sister, who died unmarried, and bequeathed her fortune to him.

HALLAM'S PREFACE

TO THE FIRST EDITION.

IT IS the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgments: yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations and of long dynasties of obscure kings.

"Non ragioniam di lor, ma guarda e passa."

And even in the more pleasing and instructive parts of this middle period it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others, or illustrative of important conclusions. But as the modes of government and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information.

Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws

of historical composition. Tried in such a balance they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found altogether perspicuous to those who are destitute of any previous acquaintance with the period to which it relates; though I have only presupposed, strictly speaking, a knowledge of the common facts of English history, and have endeavored to avoid, in treating of other countries, those allusive references which imply more information in the reader than the author designs to communicate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts which are to find a more definite place in a subsequent part of the work.

This arrangement is probably different from that of any former historical retrospect. Every chapter of the following volumes completes its particular subject, and may be considered in some degree as independent of the rest. The order consequently in which they are read will not be very material, though of course I should rather prefer that in which they are at present disposed. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial. And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the reader.

The first chapter comprises the history of France from the invasion of Clovis to the expedition, *exclusively*, of Charles VIII. against Naples. It is not possible to fix accurate limits to the Middle Ages; but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory. The continuous chain of transactions on the stage of human society is ill divided by mere lines of chronological demarcation. But as the subversion of the western empire is manifestly the natural termination of

ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period. Less difficulty occurred in finding the other limit. The invasion of Naples by Charles VIII. was the event that first engaged the principal states of Europe in relations of alliance or hostility which may be deduced to the present day, and is the point at which every man who traces backwards its political history will be obliged to pause. It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the Middle Ages in other countries.

The feudal system is treated in the second chapter, which I have subjoined to the history of France, with which it has a near connection. Inquiries into the antiquities of that jurisprudence occupied more attention in the last age than the present, and their dryness may prove repulsive to many readers. But there is no royal road to the knowledge of law; nor can any man render an obscure and intricate disquisition either perspicuous or entertaining. That the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the parties which at present divide a neighboring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity.

The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires. In the seventh I have endeavored to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable.

The English constitution furnishes materials for the eighth chapter. I cannot hope to have done sufficient justice to this theme, which has cost me considerable labor; but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historical development of our constitution, founded upon extensive researches, or calculated to give a just notion of its character. For those parts of Henry's history which profess to trace the progress of government are still more jejune than the rest of his vol-

umes; and the work of Professor Millar, of Glasgow, however pleasing from its liberal spirit, displays a fault too common among the philosophers of his country, that of theorizing upon an imperfect induction, and very often upon a total misapprehension of particular facts.

The ninth and last chapter relates to the general state of society in Europe during the Middle Ages, and comprehends the history of commerce, of manners, and of literature. None, however, of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the Middle Ages.

In the execution of a plan far more comprehensive than what with a due consideration either of my abilities or opportunities I ought to have undertaken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be frequently detected, yet I am aware that a desire of conciseness has prevented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which could only be brought within a reasonable compass by the severe retrenchment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity, have caused me to pass over many things which would have materially illustrated the various subjects of these inquiries.

I dare not, therefore, appeal with confidence to the tribunal of those superior judges who, having bestowed a more undivided attention on the particular objects that have interested them, many justly deem such general sketches imperfect and superficial; but my labors will not have proved fruitless if they shall conduce to stimulate the reflection, to guide the researches, to correct the prejudices, or to animate the liberal and virtuous sentiments of inquisitive youth:

> "Mî satis ampla
> Merces, et mihî grande decus, sim ignotus in ævum
> Tum licet, externo penitusque inglorius orbi."

April, 1818.

HALLAM'S PREFACE

TO THE SUPPLEMENTAL NOTES.

THIRTY years have elapsed since the publication of the work to which the following notes relate, and almost forty since the first chapter and part of the second were written. The occupations of that time rendered it impossible for me to bestow such undivided attention as so laborious and difficult an undertaking demanded; and at the outset I had very little intention of prosecuting my researches, even to that degree of exactness which a growing interest in the ascertainment of precise truth, and a sense of its difficulty, led me afterwards in some parts to seek, though nowhere equal to what with a fuller command of time I should have desired to attain. A measure of public approbation accorded to me far beyond my hopes has not blinded my discernment to the deficiencies of my own performance; and as successive editions have been called for, I have continually felt that there was more to correct or to elucidate than the insertion of a few foot-notes would supply, while I was always reluctant to make such alterations as would leave to the purchasers of former editions a right to complain. From an author whose science is continually progressive, such as chemistry or geology, this is unavoidably expected; but I thought the case not quite the same with a mediæval historian.

In the mean time, however, the long period of the Middle Ages had been investigated by many of my distinguished contemporaries with signal success, and I have been anxious to bring my own volumes nearer to the boundaries of the historic domain, as it has been enlarged within our own age. My object has been, accordingly, to reconsider those portions of the work which relate to subjects discussed by eminent writers since its publication, to illustrate and enlarge some passages

which had been imperfectly or obscurely treated, and to acknowledge with freedom my own errors. It appeared most convenient to adopt a form of publication by which the possessors of any edition may have the advantage of these Supplemental Notes, which will not much affect the value of their copy.

The first two Chapters, on the History of France and on the Feudal System, have been found to require a good deal of improvement. As a history, indeed, of the briefest kind, the first pages are insufficient for those who have little previous knowledge; and this I have, of course, not been able well to cure. The second Chapter embraces subjects which have peculiarly drawn the attention of Continental writers for the last thirty years. The whole history of France, civil, constitutional, and social, has been more philosophically examined, and yet with a more copious erudition, by which philosophy must always be guided, than in any former age. Two writers of high name have given the world a regular history of that country—one for modern as well as mediæval times, the other for these alone. The great historian of the Italian republics, my guide and companion in that portion of the "History of the Middle Ages," published in 1821 the first volumes of his "History of the French"; it is well known that this labor of twenty years was very nearly terminated when he was removed from the world. The two histories of Sismondi will, in all likelihood, never be superseded; if in the latter we sometimes miss, and yet we do not always miss, the glowing and vivid pencil, guided by the ardor of youth and the distinct remembrance of scenery, we find no inferiority in justness of thought, in copiousness of narration, and especially in love of virtue and indignation at wrong. It seems, indeed, as if the progress of years had heightened the stern sentiments of republicanism with which he set out, and to which the whole course of his later work must have afforded no gratification, except that of scorn and severity. Measuring not only their actions but characters by a rigid standard, he sometimes demands from the men of past times more than human frailty and ignorance could have given; and his history would leave but a painful impression from the gloominess of the picture, were not this constantly relieved by the peculiar softness and easy grace of his style. It cannot be said

that Sismondi is very diligent in probing obscurities, or in weighing evidence; his general views, with which most of his chapters begin, are luminous and valuable to the ordinary reader, but sometimes sketched too loosely for the critical investigator of history.

Less full than Sismondi in the general details, but seizing particular events or epochs with greater minuteness and accuracy—not emulating his full and flowing periods, but in a style concise, rapid, and emphatic, sparkling with new and brilliant analogies—picturesque in description, spirited in sentiment, a poet in all but his fidelity to truth—M. Michelet has placed his own "History of France" by the side of that of Sismondi. His quotations are more numerous, for Sismondi commonly gives only references, and when interwoven with the text, as they often are, though not quite according to the strict laws of composition, not only bear with them the proof which an historical assertion may fail to command, but exhibit a more vivid picture.

In praising M. Michelet we are not to forget his defects. His pencil, always spirited, does not always fill the canvas. The consecutive history of France will not be so well learned from his pages as from those of Sismondi; and we should protest against his peculiar bitterness towards England, were it not ridiculous in itself by its frequency and exaggeration.

I turn with more respect to a great name in historical literature, and which is only less great in that sense than it might have been, because it belongs also to the groundwork of all future history—the whole series of events which have been developed on the scene of Europe for twenty years now past. No envy of faction, no caprice of fortune, can tear from M. Guizot the trophy which time has bestowed, that he for nearly eight years, past and irrevocable, held in his firm grasp a power so fleeting before, and fell only with the monarchy which he had sustained, in the convulsive throes of his country.

"Cras vel atrâ
Nube polum Pater occupato,
Vel sole puro : non tamen irritum,
Quodcunque retro est, efficiet."

It has remained for my distinguished friend to manifest that high attribute of a great man's mind—a constant and unsub-

dued spirit in adversity, and to turn once more to those tranquil pursuits of earlier days which bestow a more unmingled enjoyment and a more unenvied glory than the favor of kings or the applause of senates.

The "Essais sur l'Histoire de France," by M. Guizot, appeared in 1820; the "Collection de Mémoires relatives à l'Histoire de France" (a translation generally from the Latin, under his superintendence and with notes by him), if I mistake not, in 1825; the Lectures on the civilization of Europe, and on that of France, are of different dates, some of the latter in 1829. These form, by the confession of all, a sort of epoch in mediæval history by their philosophical acuteness, the judicious choice of their subjects, and the general solidity and truth of the views which they present.

I am almost unwilling to mention several other eminent names, lest it should seem invidious to omit any. It will sufficiently appear by these Notes to whom I have been most indebted. Yet the writings of Thierry, Fauriel, Raynouard, and, not less valuable, though in time almost the latest, Lehuerou, ought not to be passed in silence. I shall not attempt to characterize these eminent men; but the gratitude of every inquirer into the mediæval history of France is especially due to the Ministry of Public Instruction under the late government for the numerous volumes of Documens Inédits, illustrating that history, which have appeared under its superintendence, and at the public expense, within the last twelve years. It is difficult not to feel, at the present juncture, the greatest apprehension that this valuable publication will at least be suspended.

Several Chapters which follow the second in my volumes have furnished no great store of additions; but that which relates to the English Constitution has appeared to require more illustration. Many subjects of no trifling importance in the history of our ancient institutions had drawn the attention of men very conversant with its best sources; and it was naturally my desire to impart in some measure the substance of their researches to my readers. In not many instances have I seen ground for materially altering my own views; and I have not of course hesitated to differ from those whom I often quote with much respect. The publications of the Record Commission—the celebrated Report of the Lords' Com-

mittee on the Dignity of a Peer—the work of my learned and gifted friend Sir Francis Palgrave, On the Rise and Progress of the English Commonwealth, replete with omnifarious reading and fearless spirit, though not always commanding the assent of more sceptical tempers—the approved and valuable contributions to constitutional learning by Allen, Kemble, Spence, Starkie, Nicolas, Wright, and many others —are full of important facts and enlightened theories. Yet I fear that I shall be found to have overlooked much, especially in that periodical literature which is too apt to escape our observation or our memory; and can only hope that these Notes, imperfect as they must be, will serve to extend the knowledge of my readers and guide them to the sources of historic truth. They claim only to be supplemental, and can be of no service to those who do not already possess the " History of the Middle Ages."

The paging of the editions of 1826 and 1841, one in three volumes, the other in two, has been marked for each Note, which will prevent, I hope, all inconvenience in reference.*

June, 1848.

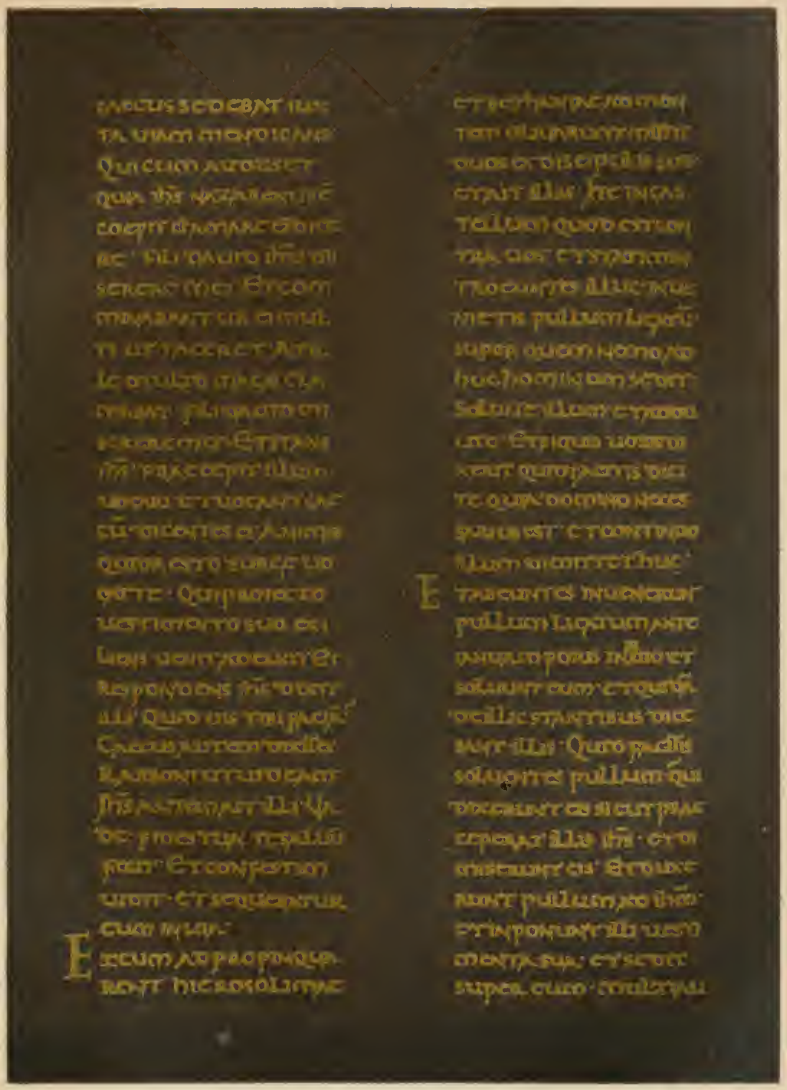
* In the present edition the " Supplemental Notes " have been incorporated with the original work, partly at the foot of the pages, partly at the close of chapters.

CHOICE EXAMPLES OF BOOK ILLUMINATION.

Fac-similes from Illuminated Manuscripts and Illustrated Books of Early Date.

A PAGE FROM THE GOLDEN GOSPELS.

Written on purple vellum for Ceolfrid Abbat of Wearmouth about the year 700, containing the first Vulgate text seen in England. Formerly in the library of Henry VIII., afterward in the collection of the Duke of Hamilton; now in the possession of Bernard Quaritch.



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Photogravure from a steel engraving

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BOOK I.

THE HISTORY OF FRANCE.

BOOK I.

THE HISTORY OF FRANCE, FROM ITS CONQUEST BY CLOVIS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

Fall of the Roman Empire—Invasion of Clovis—First Race of French Kings—Accession of Pepin—State of Italy—Charlemagne—His Reign and Character—Louis the Debonair—His Successors—Calamitous State of the Empire in the ninth and tenth Centuries—Accession of Hugh Capet—His first Successors—Louis VII.—Philip Augustus—Conquest of Normandy—War in Languedoc—Louis IX.—His Character—Digression upon the Crusades—Philip III.—Philip IV.—Aggrandizement of French Monarchy under his Reign—Reigns of his Children—Question of Salic Law—Claim of Edward III.

Before the conclusion of the fifth century the mighty fabric of empire which valor and policy had founded upon the seven hills of Rome was finally overthrown in all the west of Europe by the barbarous nations from the north, whose martial energy and whose numbers were irresistible. A race of men, formerly unknown or despised, had not only dismembered that proud sovereignty, but permanently settled themselves in its fairest provinces, and imposed their yoke upon the ancient possessors. The Vandals were masters of Africa; the Suevi held part of Spain; the Visigoths possessed the remainder, with a large portion of Gaul; the Burgundians occupied the provinces watered by the Rhone and Saône; the Ostrogoths almost all Italy. The north-west of Gaul, between the Seine and the Loire, some writers have filled with an Armorican republic;[a] while the remainder was still nominally subject to the Roman

[a] It is impossible not to speak sceptically as to this republic, or rather confederation of independent cities under the rule of their respective bishops, which Dubos has with great ingenuity raised upon a passage of Zosimus, but in defiance of the silence of Gregory, whose see of Tours bordered upon their supposed territory. Yet his hypothesis is not to be absolutely rejected, because it is by no means deficient in internal probability, and the early part of Gregory's history is brief and negligent. Dubos, Hist. Critique de l'Etablissement des Français dans les Gaules, t. i. p. 253. Gibbon, c. 38, after following Dubos in his text, whispers as usual, his suspicions in a note. [Note I.]

empire, and governed by a certain Syagrius, rather with an independent than a deputed authority.

At this time Clovis, king of the Salian Franks, a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine,[b] but who had latterly penetrated as far as Tournay and Cambray,[c] invaded Gaul, and defeated Syagrius at Soissons. [A.D. 486.] The result of this victory was the subjugation of those provinces which had previously been considered as Roman. But as their allegiance had not been very strict, so their loss was not very severely felt; since the emperors of Constantinople were not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse.[d]

Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich, near Cologne. In consequence of a vow, as it is said, made during this engagement,[e] and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity. [A.D. 496.] It would be a fruitless inquiry whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful. The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance,[f] in the Burgundian

b [Note II.]

c The system of Père Daniel who denies any permanent settlement of the Franks on the left bank of the Rhine before Clovis, seems incapable of being supported. It is difficult to resist the presumption that arises from the discovery of the tomb and skeleton of Childeric, father of Clovis, at Tournay, in 1653. See Montfaucon, Monumens de la Monarchie Française, tome i. p. 10.

d The theory of Dubos, who considers Clovis as a sort of lieutenant of the emperors, and as governing the Roman part of his subjects by no other title, has justly seemed extravagant to later critical inquirers into the history of France. But it may nevertheless be true that the connection between him and the empire, and the emblems of Roman magistracy which he bore, reconciled the conquered to their new masters. This is judiciously stated by the Duke de Nivernois, Mém. de l'Acad. des Inscrip., tome xx. p. 174. [Note III.] In the sixth century, however, the Greeks appear to have been nearly ignorant of Clovis's countrymen. Nothing can be made out of a passage in Procopius where he seems to mention the Armoricans under the name Ἀρβόρυχοι; and Agathias gives a strangely romantic account of the Franks, whom he extols for their conformity to Roman Laws, πολιτείᾳ ὡς τὰ πολλὰ χρῶνται Ῥωμαϊκῇ, καὶ νόμοις τοῖς αὐτοῖς, καὶ τὰ ἄλλα ὁμοίως ἀμφί τε τὰ συμβόλαια καὶ γάμους καὶ τὴν τοῦ θείου θεράπειαν νομίζουσι . . . . ἐμοί γε δοκοῦσι σφόδρα εἶναι κόσμιοί τε καὶ ἀστειότατοι, οὐδέν τε ἔχειν τὸ διάλλαττον, ἢ μόνον τὸ βαρβάρικον τῆς στολῆς, καὶ τὸ τῆς φωνῆς ἰδιαζον. He goes on to commend their mutual union, and observes particularly that, in partitions of the kingdom, which had frequently been made, they had never taken up arms against each other, nor polluted the land with civil bloodshed. One would almost believe him ironical. The history of Agathias comes down to A.D. 559. At this time many of the savage murders and other crimes which fill the pages of Gregory of Tours, a writer somewhat more likely to know the truth than a Byzantine rhetorician, had taken place.

e Gregory of Tours makes a very rhetorical story of this famous vow, which, though we cannot disprove, it may be permitted to suspect.—L. ii. c. 30.

f Hist. de Languedoc, par Vich et Vaissette, tome i. p. 238; Gibbon, c. 37. A specious objection might be drawn from the history of the Gothic monarchies in Italy, as well as Gaul and Spain, to the great principles of re-

and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and, even before his conversion, had favored the arms of Clovis. They now became his most zealous supporters, and were rewarded by him with artful gratitude, and by his descendants with lavish munificence. Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and, by one great victory near Poitiers overthrowing their empire in Gaul, reduced them to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees. [A.D. 507.] The last exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighborhood of the Rhine.*g* All these he put to death by force or treachery; for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendor and the guiltiness of his ambition.*h*

ligious toleration. These Arian sovereigns treated their Catholic subjects, it may be said, with tenderness, leaving them in possession of every civil privilege, and were rewarded for it by their defection or sedition. But in answer to this it may be observed:—1. That the system of persecution adopted by the Vandals in Africa succeeded no better, the Catholics of that province having risen against them upon the landing of Belisarius: 2. That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured, especially from the Arian bishops, in that age of bigotry; although the administrations of Alaric and Theodoric were liberal and tolerant: 3. That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman, of conqueror and conquered; so that it is difficult to separate the effects of national from those of sectarian animosity.

The tolerance of the Visigoth sovereigns must not be praised without making an exception for Euric, predecessor of Alaric. He was a prince of some eminent qualities, but so zealous in his religion as to bear hardly on his Catholic subjects. Sidonius Apollinaris loudly proclaims that no bishoprics were permitted to be filled, that the churches went to ruin, and that Arianism made a great progress. (Fauriel, Hist. de la Gaule Méridionale, vol. i. p. 578.) Under Alaric himself, however, as well as under the earlier kings of the Visigothic dynasty, a more liberal spirit prevailed. Salvian, about the middle of the fifth century, extols the Visigothic government, in comparison with that of the empire, whose vices and despotism had met with a deserved termination. Eucherius speaks of the Burgundians in the same manner. (Id. ibid. and vol. ii. p. 28.) Yet it must have been in itself mortifying to live in subjection to barbarians and heretics; not to mention the hospitality, as it was called, which the natives were obliged to exercise towards the invaders, by ceding two-thirds of their lands. What, then, must the Western empire have been, when such a condition was comparatively enviable! But it is more than probable that the Gaulish bishops subject to the Visigoths hailed the invasion of the Franks with sanguine hope, and were undoubtedly great gainers by the exchange.

g Modern historians, in enumerating these *reguli*, call one of them King of Mans. But it is difficult to understand how a chieftain, independent of Clovis, could have been settled in that part of France. In fact, Gregory of Tours, our only authority, does not say that this prince, Regnomeris, was King of Mans, but that he was put to death in that city: apud Cenomannis civitatem jussu Chlodovechi interfectus est.

The late French writers, as far as I have observed, continue to place a kingdom at Mans. It is certain, nevertheless, that Gregory of Tours, and they have no other evidence, does not assert this; and his expressions rather lead to the contrary; since, if Regnomeris were King of Mans, why should we not have been informed of it? It is, indeed, impossible to determine such a point negatively from our scanty materials; but if a Frank kingdom had been formed at Mans before the battle of Soissons, this must considerably alter the received notions of the history of Gaul in the fifth century; and it seems difficult to understand how it could have sprung up afterwards during the reign of Clovis.

h The reader will be gratified by an

Clovis left four sons; one illegitimate, or at least born before his conversion; and three by his queen Clotilda. [A.D. 511.] These four made, it is said, an equal partition of his dominions, which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Swabia, which were governed by their own dependent, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons.*i* During their reigns the monarchy was aggrandized by the conquest of Burgundy. Clotaire, the youngest brother, ultimately reunited all the kingdoms [A.D. 558]; but upon his death they were again divided among his four sons, and brought together a second time by another Clotaire, the grandson to the first. [A.D. 613.] It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find anywhere more vice or less

admirable memoir, by the Duke de Nivernois, on the policy of Clovis, in the twentieth volume of the Academy of Inscriptions.

i Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur. l. iii. c. 1. It would rather perplex a geographer to make an equal division of Clovis's empire into portions, of which Paris, Orleans, Metz, and Soissons should be the respective capitals. I apprehend, in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex; insulated fragments of territory, and even undivided shares of cities, being allotted to the worse-provided brothers, by way of compensation, out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monarchies. But the French empire was always considered as one, whatever might be the number of its inheritors; and from accidental circumstances it was so frequently reunited as fully to keep up this notion.

M. Fauriel endeavors to show the equality of this partition (Hist. de la Gaule Méridionale, vol. ii. p. 92.) But he is obliged to suppose that Germany beyond the Rhine, part of which owned the dominion of Clovis, was counted as nothing, not being inhabited by Franks. It was something, nevertheless, in the scale of power; since from this fertile source the Austrasian kings continually recruited their armies. Aquitaine, that is, the provinces south of the Loire, was divided into three, or rather perhaps two portions. For though Thierry and Childebert had considerable territories, it seems not certain that Clodomir took any share, and improbable that Clotaire had one.

Thierry, therefore, King of Austrasia, may be reckoned the best provided of the brethren. It will be obvious from the map that the four capitals, Metz, Soissons, Paris, and Orleans, are situated at no great distance from each other, relatively to the whole of France. They were, therefore, in the centre of force; and the brothers might have lent assistance to each other in case of a national revolt.

The cause of this complexity in the partition of France among the sons of Clovis has been conjectured by Dubos, with whom Sismondi (vol. i. p. 242) agrees, to have been their desire of owning as subjects an equal number of Franks. This is supported by a passage in Agathias, quoted by the former, Hist. de l'Etablissement, vol. ii. p. 413. Others have fancied that Aquitaine was reckoned too delicious a morsel to be enjoyed by only one brother. In the second great partition, that of 567 (for that of 561 did not last long), when Sigebert, Gontran, and Chilperic took the kingdoms of Austrasia, Burgundy, and what was afterwards called Neustria, the southern provinces were again equally divided. Thus Marseilles fell to the king of Paris, or Neustria, while Aix and Avignon were in the lot of Burgundy.

virtue. The names of two queens are distinguished even in that age for the magnitude of their crimes: Fredegonde, the wife of Chilperic, of whose atrocities none have doubted; and Brunehaut, Queen of Austrasia, who has met with advocates in modern times, less, perhaps, from any fair presumptions of her innocence than from compassion for the cruel death which she underwent.*j*

But after Dagobert, son of Clotaire II., the kings of France dwindled into personal insignificance, and are generally treated by later historians as insensati, or idiots.*k* The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king.*l* The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France for half a century presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia, the western and eastern divisions of the French monarchy.*m* These, however, met with violent

j Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these times are of little other importance than as they impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. [Note IV.]

For the question about Brunehaut's character, who has had partisans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier, Recherches de la France, t. viii., or Velly, Hist. de France, tome i., on one side, and a dissertation by Gaillard, in the Memoirs of the Academy of Inscriptions, tome xxx., on the other. The last is unfavorable to Brunehaut, and perfectly satisfactory to my judgment.

Brunehaut was no unimportant personage in this history. She had become hateful to the Austrasian aristocracy by her Gothic blood, and still more by her Roman principles of government. There was evidently a combination to throw off the yoke of civilized tyranny. It was a great conflict, which ended in the virtual dethronement of the house of Clovis. Much, therefore, may have been exaggerated by Fredegarius, a Burgundian by birth, in relating the crimes of Brunehaut. But, unhappily, the antecedent presumption, in the history of that age, is always on the worse side. She was unquestionably endowed with a masculine energy of mind, and very superior to such a mere imp of audacious wickedness as Fredegonde. Brunehaut left a great and almost fabulous name; public causeways, towers, castles, in different parts of France, are popularly ascribed to her. It has even been suspected by some that she suggested the appellation of Brunhild in the Nibelungen Lied. That there is no resemblance in the story, or in the character, courage excepted, of the two heroines, cannot be thought an objection.

k An ingenious attempt is made by the Abbé Vertot, Mém. de l'Académie, tome vi., to rescue these monarchs from this long-established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However, the best apology seems to be, that, after the victories of Pepin Heristal, the Merovingian kings were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

l [Note V.]

m The original kingdoms of Soissons, Paris, and Orleans were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I., separated from the rest of

ends; but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterwards duke, of Austrasia; who united with almost an avowed sovereignty over that division a paramount command over the French or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist.[n] This authority he transmitted to a more renowned hero, his son, Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy. The Saracens, after subjugating Spain, had penetrated into the very heart of France. Charles Martel gained a complete victory over them between Tours and Poitiers,[o] in which 300,000 Mohammedans are hyperbolically asserted to have fallen. [A.D. 732.] The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths.[p]

Such powerful subjects were not likely to remain long contented without the crown; but the circumstances under which it was transferred from the race of Clovis are connected with one of the most important revolutions in the history of Europe. The mayor Pepin, inheriting his father Charles Martel's talents and ambition, made, in the name and with the consent of the nation, a solemn reference to the Pope Zacharias, as to the deposition of Childeric III., under whose nominal authority he himself was reigning. The decision was favorable; that he who possessed the power should also bear the title of king. The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne,

the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch. [Note VI.]

n [Note VII.]

o Tours is above seventy miles distant from Poitiers; but I do not find that any French antiquary has been able to ascertain the place of this great battle with more precision; which is remarkable, since, after so immense a slaughter, we should expect the testimony of "grandia effossis ossa sepulcris." It is now, however, believed that the slaughter at the battle near Poitiers was by no means immense, and even that the Saracens retired without a decisive action. (Sismondi, ii. 132; Michelet, ii. 13.) There can be no doubt but that the battle was fought much nearer to Poitiers than to Tours.

The victory of Charles Martel has immortalized his name, and may justly be reckoned among those few battles of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Châlons, and Leipsic. Yet do we not judge a little too much by the event, and follow, as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad champaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

p This conquest was completed by Pepin in 759. The inhabitants preserved their liberties by treaty; and Vaissette deduces from this solemn assurance the privileges of Languedoc. —Hist. de Lang., tome i. p. 412.

the founder of a more illustrious dynasty.[q] In order to judge of the importance of this revolution to the see of Rome, as well as to France, we must turn our eyes upon the affairs of Italy.

The dominion of the Ostrogoths was annihilated by the arms of Belisarius and Narses in the sixth century, and that nation appears no more in history. But not long afterwards, the Lombards, a people for some time settled in Pannonia, not only subdued that northern part of Italy which has retained their name, but, extending themselves southward, formed the powerful duchies of Spoleto and Benevento. The residence of their kings was in Pavia; but the hereditary vassals, who held those two duchies, might be deemed almost independent sovereigns.[r] The rest of Italy was governed by exarchs, deputed by the Greek emperors, and fixed at Ravenna. In Rome itself neither the people nor the bishops, who had already conceived in part their schemes of ambition, were much inclined to endure the superiority of Constantinople; yet their disaffection was counterbalanced by the inveterate hatred as well as jealousy, with which they regarded the Lombards. But an impolitic and intemperate persecution, carried on by two or three Greek emperors against a favorite superstition, the worship of images, excited commotions throughout Italy, of which the Lombards took advantage, and easily wrested the exarchate of Ravenna [A.D. 752] from the eastern empire. It was far from the design of the popes to see their nearest enemies so much aggrandized; and any effectual assistance from the Emperor Constantine Copronymus would have kept Rome still faithful. But having no hope from his arms, and provoked by his obstinate intolerance, the pontiffs had recourse to France;[s] and the service they had rendered to Pepin led to reciprocal obligations of the greatest magnitude. At the request of Stephen II. the new King of France descended from the Alps, drove the Lombards from their recent conquests, and conferred them upon the pope. This memorable donation nearly comprised the modern provinces of Romagna and the March of Ancona.[t]

[q] [Note VIII.]

[r] The history, character, and policy of the Lombards are well treated by Gibbon, c. 45. See, too, the fourth and fifth books of Giannone, and some papers by Gaillard in the Memoirs of the Academy of Inscriptions, tomes xxxii., xxxv., xlv.

[s] There had been some previous overtures to Charles Martel as well as to Pepin himself; the habitual sagacity of the court of Rome perceiving the growth of a new western monarchy, which would be, in faith and arms, their surest ally. Muratori, Ann. d'Ital. A.D. 741.

[t] Giannone, l. v. c. 2.

The state of Italy, which had undergone no change for nearly two centuries, was now rapidly verging to a great revolution. [A.D. 768.] Under the shadow of a mighty name the Greek empire had concealed the extent of its decline. That charm was now broken: and the Lombard kingdom, which had hitherto appeared the only competitor in the lists, proved to have lost his own energy in awaiting the occasion for its display. France was far more than a match for the power of Italy, even if she had not been guided by the towering ambition and restless activity of the son of Pepin. It was almost the first exploit of Charlemagne, after the death of his brother Carloman [A.D. 772] had reunited the Frankish empire under his dominion,[u] to subjugate the kingdom of Lombardy. [A.D. 774.] Neither Pavia nor Verona, its most considerable cities, interposed any material delay to his arms: and the chief resistance he encountered was from the dukes of Friuli and Benevento, the latter of whom could never be brought into thorough subjection to the conqueror. Italy, however, be the cause what it might, seems to have tempted Charlemagne far less than the dark forests of Germany. For neither the southern provinces, nor Sicily, could have withstood his power if it had been steadily directed against them. Even Spain hardly drew so much of his attention as the splendor of the prize might naturally have excited. He gained, however, a very important accession to his empire, by conquering from the Saracens the territory contained between the Pyrenees and the Ebro. This was formed into the Spanish March, governed by the Count of Barcelona, part of which at least must be considered as appertaining to France till the twelfth century.[v]

But the most tedious and difficult achievement of Charlemagne was the reduction of the Saxons. The wars with this nation, who occupied nearly the modern circles of Westphalia and Lower Saxony, lasted for thirty years. Whenever the

u Carloman, younger brother of Charles, took the Austrasian or German provinces of the empire. The custom of partition was so fully established, that those wise and ambitious princes, Charles Martel, Pepin, and Charlemagne himself, did not venture to thwart the public opinion by introducing primogeniture. Carloman would not long have stood against his brother; who, after his death, usurped the inheritance of his two infant children.

v The counts of Barcelona always acknowledged the feudal superiority of the kings of France, till some time after their own title had been merged in that of kings of Aragon. In 1180 legal instruments executed in Catalonia ceased to be dated by the year of the King of France; and as there certainly remained no other mark of dependence, the separation of the principality may be referred to that year. But the rights of the French crown over it were finally ceded by Louis IX. in 1258. De Marca, Marca Hispanica, p. 514. Art de vérifier les Dates, t. ii. p. 291.

conqueror withdrew his armies, or even his person, the Saxons broke into fresh rebellion, which his unparalleled rapidity of movement seldom failed to crush without delay. From such perseverance on either side, destruction of the weaker could alone result. A large colony of Saxons were finally transplanted into Flanders and Brabant, countries hitherto ill-peopled, in which their descendants preserved the same unconquerable spirit of resistance to oppression. Many fled to the kingdoms of Scandinavia, and, mingling with the Northmen, who were just preparing to run their memorable career, revenged upon the children and subjects of Charlemagne the devastation of Saxony. The remnant embraced Christianity, their aversion to which had been the chief cause of their rebellions, and acknowledged the sovereignty of Charlemagne —a submission which even Witikind, the second Arminius of Germany, after such irresistible conviction of her destiny, did not disdain to make. But they retained, in the main, their own laws; they were governed by a duke of their own nation, if not of their own election; and for many ages they were distinguished by their original character among the nations of Germany.[w]

The successes of Charlemagne on the eastern frontier of his empire against the Sclavonians of Bohemia and Huns or Avars of Pannonia, though obtained with less cost, were hardly less eminent. In all his wars the newly conquered nations, or those whom fear had made dependent allies, were employed to subjugate their neighbors, and the incessant waste of fatigue and the sword was supplied by a fresh population that swelled the expanding circle of dominion. I do not know that the limits of the new western empire are very exactly defined by contemporary writers, nor would it be easy to appreciate the degree of subjection in which the Sclavonian tribes were held. As an organized mass of provinces, regularly governed by imperial officers, it seems to have been nearly bounded, in Germany, by the Elbe, the Saale, the Bohemian mountains, and a line drawn from thence crossing the Danube above Vienna, and prolonged to the Gulf of Istria. Part of Dalmatia was comprised in the duchy of Friuli. In Italy the empire extended not much beyond the modern frontier of Naples, if we exclude, as was the fact, the duchy of Benevento from anything

[w] [Note IX.]

more than a titular subjection. The Spanish boundary, as has been said already, was the Ebro.[x]

A seal was put to the glory of Charlemagne when Leo III., in the name of the Roman people, placed upon his head the imperial crown. [A.D. 800.] His father, Pepin, had borne the title of Patrician, and he had himself exercised, with that title, a regular sovereignty over Rome.[y] Money was coined in his name, and an oath of fidelity was taken by the clergy and people. But the appellation of Emperor seemed to place his authority over all his subjects on a new footing. It was full of high and indefinite pretension, tending to overshadow the free election of the Franks by a fictitious descent from Augustus. A fresh oath of fidelity to him as emperor was demanded from his subjects. His own discretion, however, prevented him from affecting those more despotic prerogatives which the imperial name might still be supposed to convey.[z]

In analyzing the characters of heroes it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legends of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has embodied itself in his name. None, indeed, of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but that was a contest for freedom, his for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar, his

[x] I follow in this the map of Koch, in his Tableau des Révolutions de l'Europe, tome i. That of Vaugondy, Paris, 1752, includes the dependent Sclavonic tribes, and carries the limit of the empire to the Oder and frontiers of Poland. The authors of L'Art de vérifier les Dates extend it to the Raab. It would require a long examination to give a precise statement.

[y] The Patricians of the lower empire were governors sent from Constantinople to the provinces. Rome had long been accustomed to their name and power. The subjection of the Romans, both clergy and laity, to Charlemagne, as well before as after he bore the imperial name, seems to be established. See Dissertation Historique, par le Blanc, subjoined to his Traité de Monnoyes de France, p. 18; and St. Marc, Abrégé Chronologique de l'Histoire de l'Italie, t. i. The first of these writers does not allow that Pepin exercised any authority at Rome. A good deal of obscurity rests over its internal government for nearly fifty years; but there is some reason to believe that the nominal sovereignty of the Greek emperors was not entirely abrogated. Muratori, Annali d'Italia, ad. ann. 772; St. Marc, t. i. pp. 356, 372. A mosaic, still extant in the Lateran palace, represents our Saviour giving the keys to St. Peter with one hand, and with the other a standard to a crowned prince, bearing the inscription Constantine V. But Constantine V. did not begin to reign till 780; and if this piece of workmanship was made under Leo III., as the authors of L'Art de vérifier les Dates imagine, it could not be earlier than 795. T. i. p. 262; Muratori ad. ann. 798. However this may be, there can be no question that a considerable share of jurisdiction and authority was practically exercised by the popes during this period. Vid. Murat. ad. ann. 789.

[z] [Note X.]

acquisitions were probably little superior to those of his unrespected son; and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection.[a] But rejecting a mode of judging equally uncandid and fallacious, we shall find that he possessed in everything that grandeur of conception which distinguishes extraordinary minds. Like Alexander, he seemed born for universal innovation: in a life restlessly active, we see him reforming the coinage and establishing the legal divisions of money; gathering about him the learned of every country; founding schools and collecting libraries; interfering, but with the tone of a king, in religious controversies; aiming, though prematurely, at the formation of a naval force; attempting, for the sake of commerce, the magnificent enterprise of uniting the Rhine and Danube;[b] and meditating to mould the discordant codes of Roman and barbarian laws into an uniform system.

The great qualities of Charlemagne were, indeed, alloyed by the vices of a barbarian and a conqueror. Nine wives, whom he divorced with very little ceremony, attest the license of his private life, which his temperance and frugality can hardly be said to redeem. Unsparing of blood, though not constitutionally cruel, and wholly indifferent to the means which his ambition prescribed, he beheaded in one day four thousand Saxons—an act of atrocious butchery, after which his persecuting edicts, pronouncing the pain of death against those who refused baptism, or even who ate flesh during Lent, seem scarcely worthy of notice. This union of barbarous ferocity with elevated views of national improvement might suggest the parallel of Peter the Great. But the degrading habits and brute violence of the Muscovite place him at an immense distance from the restorer of the empire.

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne, and this undoubtedly biassed him in the chief political error of his conduct—that of encouraging the power and pretensions of the hierarchy. But, perhaps, his greatest eulogy is written in the disgraces of suc-

a Eginhard attests his ready eloquence, his perfect mastery of Latin, his knowledge of Greek so far as to read it, his acquisitions in logic, grammar, rhetoric, and astronomy. But the anonymous authors of the life of Louis the Debonair attribute most of these accomplishments to that unfortunate prince.

b See an essay upon this project in the Memoirs of the Academy of Inscriptions, t. xviii. The rivers which were designed to form the links of this junction were the Altmuhl, the Regnitz, and the Main; but their want of depth, and the sponginess of the soil, appear to present insuperable impediments to its completion.

ceeding times and the miseries of Europe. He stands alone, like a beacon upon a waste, or a rock in the broad ocean. His sceptre was the bow of Ulysses, which could not be drawn by any weaker hand. In the dark ages of European history the reign of Charlemagne affords a solitary resting-place between two long periods of turbulence and ignominy, deriving the advantages of contrast both from that of the preceding dynasty and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain.*c*

Pepin, the eldest son of Charlemagne, died before him, leaving a natural son, named Bernard.*d* Even if he had been legitimate, the right of representation was not at all established during these ages; indeed, the general prejudice seems to have inclined against it. Bernard, therefore, kept only the kingdom of Italy, which had been transferred to his father; while Louis, the younger son of Charlemagne, inherited the empire.*e* But, in a short time, Bernard, having attempted a rebellion against his uncle, was sentenced to lose his eyes, which occasioned his death [A.D. 817]—a cruelty more agreeable to the prevailing tone of manners than to the character of Louis, who bitterly reproached himself for the severity he had been persuaded to use.

Under this prince, called by the Italians the Pious, and by the French the Debonair, or Good-natured,*f* the mighty struct-

c The Life of Charlemagne, by Gaillard, without being made perhaps so interesting as it ought to have been, presents an adequate view both of his actions and character. Schmidt, Hist. des Allemands, tome ii., appears to me a superior writer.

An exception to the general suffrage of historians in favor of Charlemagne is made by Sismondi. He seems to consider him as having produced no permanent effect; the empire, within half a century, having been dismembered, and relapsing into the merest weakness:—"Tellement la grandeur acquise par les armes est trompeuse, quand elle ne se donne pour appui aucune institution bienfaisante; et tellement le règne d'un grand roi demeure stérile, quand il ne fonde pas la liberté de ses concitoyens." (Vol. iii. p. 97.) But certainly some of Charlemagne's institutions were likely to prove beneficial if they could have been maintained, such as the Scabini and the Missi Dominici. And when Sismondi hints that Charlemagne ought to have given a *charte constitutionnelle*, it is difficult not to smile at such a proof of his inclination to judge past times by a standard borrowed from the theories of his own. M. Guizot asks whether the nation was left in the same state in which the emperor found it. Nothing fell with him, he remarks, but the central government, which could only have been preserved by a series of men like himself. (Essais sur l'Hist. de France, pp. 276-294; Hist. de la Civilisation en France, Leçon ii. p. 39.) Some, indeed, of his institutions cannot be said to have long survived him; but this again must be chiefly attributed to the weakness of his successors. No one man of more than common ability arose in the Carlovingian dynasty after himself, a fact very disadvantageous to the permanence of his policy, and perhaps rather surprising; though it is a theory of Sismondi that royal families naturally dwindle into imbecility, especially in a semi-barbarous condition of society.

d A contemporary author, Thegan, ap. Muratori, A.D. 810, asserts that Bernard was born of a concubine. I do not know why modern historians represent it otherwise.

e [Note XI.]

f These names, as a French writer observes, meant the same thing. *Pius* had, even in good Latin, the sense of *mitis*, meek, forbearing, or what the

ure of his father's power began rapidly to decay. I do not know that Louis deserves so much contempt as he has undergone; but historians have in general more indulgence for splendid crimes than for the weaknesses of virtue. There was no defect in Louis's understanding or courage; he was accomplished in martial exercises, and in all the learning which an education, excellent for that age, could supply. No one was ever more anxious to reform the abuses of administration; and whoever compares his capitularies with those of Charlemagne will perceive that, as a legislator, he was even superior to his father. The fault lay entirely in his heart; and this fault was nothing but a temper too soft and a conscience too strict.*g* It is not wonderful that the empire should have been speedily dissolved; a succession of such men as Charles Martel, Pepin, and Charlemagne, could alone have preserved its integrity; but the misfortunes of Louis and his people were immediately owing to the following errors of his conduct.

Soon after his accession Louis thought fit to associate his eldest son, Lothaire, to the empire, and to confer the provinces of Bavaria and Aquitaine, as subordinate kingdoms, upon the two younger, Louis and Pepin. The step was, in appearance, conformable to his father's policy, who had acted towards himself in a similar manner. But such measures are not subject to general rules, and exact a careful regard to characters and circumstances. The principle, however, which regulated this division was learned from Charlemagne, and could alone, if strictly pursued, have given unity and permanence to the empire. The elder brother was to preserve his superiority over the others, so that they should neither make peace nor war, nor even give answer to ambassadors, without his consent. Upon the death of either no further partition was to be made; but whichever of his children might become the popular choice was to inherit the whole kingdom, under the same superiority of the head of the family.*h* This compact was, from the beginning, disliked by the younger brothers; and an event, upon which Louis does not seem to have calculated, soon disgusted

French call *débonnaire*. Synonymes de Rouband, tom. i. p. 257. Our English word debonair is hardly used in the same sense, if indeed it can be called an English word; but I have not altered Louis's appellation, by which he is so well known.

g Schmidt, Hist. des Allemands, tom. ii., has done more justice than other historians to Louis's character. Vaissette attests the goodness of his government in Aquitaine, which he held as a subordinate kingdom during his father's life. It extended from the Loire to the Ebro, so that the trust was not contemptible.—Hist. de Languedoc, tom. i. p. 476.

h Baluzii Capitularia, tom. i. p. 575.

his colleague Lothaire. Judith of Bavaria, the emperor's second wife, an ambitious woman, bore him a son, by name Charles, whom both parents were naturally anxious to place on an equal footing with his brothers. But this could only be done at the expense of Lothaire, who was ill disposed to see his empire still further dismembered for this child of a second bed. Louis passed his life in a struggle with three undutiful sons, who abused his paternal kindness by constant rebellions.

These were rendered more formidable by the concurrence of a different class of enemies, whom it had been another error of the emperor to provoke. Charlemagne had assumed a thorough control and supremacy over the clergy; and his son was perhaps still more vigilant in chastising their irregularities, and reforming their rules of discipline. But to this, which they had been compelled to bear at the hands of the first, it was not equally easy for the second to obtain their submission. Louis therefore drew on himself the inveterate enmity of men who united with the turbulence of martial nobles a skill in managing those engines of offence which were peculiar to their order, and to which the implicit devotion of his character laid him very open. Yet, after many vicissitudes of fortune, and many days of ignominy, his wishes were eventually accomplished. [A.D. 840.] Charles, his youngest son, surnamed the Bald, obtained, upon his death, most part of France, while Germany fell to the share of Louis, and the rest of the imperial dominions, with the title, to the eldest, Lothaire. [A.D. 847.] This partition was the result of a sanguinary, though short, contest; and it gave a fatal blow to the empire of the Franks. For the treaty of Verdun, in 843, abrogated the sovereignty that had been attached to the eldest brother and to the imperial name in former partitions: each held his respective kingdom as an independent right.*i* This is the epoch of a final separation between the French and German members of the empire. Its millenary was celebrated by some of the latter nation in 1843.*j*

i Baluzii Capitularia, tom. ii. p. 42; Velly, tome ii. p. 75. The expressions of this treaty are perhaps equivocal; but the subsequent conduct of the brothers and their family justifies the construction of Velly, which I have followed.

j The partition, which the treaty of Verdun confirmed, had been made by commissioners specially appointed in the preceding year. "Le nombre total des commissaires fut porté à trois cents; ils se distribuérent toute la surface de l'empire, qu'ils s'engagèrent à parcourir avant le mois d'août de l'année suivante: cet immense travail etoit en effet alors nécessaire pour se procurer les connoissances qu'on obtient aujourd'hui en un instant, par l'inspection d'une carte géographique: malheureusement on écrivoit à cette époque aussi peu qu'on lisoit. Le rapport des commissaires ne fut point mis par écrit, ou point déposé dans les archives. S'il nous avoit été conservé,

The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years the empire was nearly reunited under Charles the Fat, son of Louis of Germany [Emperor A.D. 881; King of France, 885]; but his short and inglorious reign ended in his deposition. [A.D. 887.] From this time the possession of Italy was contested among her native princes; Germany fell at first to an illegitimate descendant of Charlemagne, and in a short time was entirely lost by his family; two kingdoms, afterwards united, were formed by usurpers out of what was then called Burgundy, and comprised the provinces between the Rhone and the Alps, with Franche Comté, and great part of Switzerland.[k] In France the Carlovingian kings continued for another century; but their line was interrupted two or three times by the election or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the phantoms of royalty they had professed to serve.[l] [Kings of France: Eudes, A.D. 887; Charles the Simple, 898; Robert (?), 922; Ralph, 923; Louis IV., 936; Lothaire, 954; Louis V., 986; counts of Paris.] Hugh Capet, the representative of this house upon the death of Louis V., placed himself upon the throne; thus founding the third and most permanent race of French sovereigns. Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon. The rest of the kingdom had been seized by the powerful

ce seroit le plus curieux de tous les monumens sur l'état de l'Europe au moyen âge." (Sismondi, Hist. des Franç. iii. 76.) For this he quotes Nithard, a contemporary historian.

In the division made on this occasion the kingdom of France, which fell to Charles the Bald, had for its eastern boundary, the Meuse, the Saône, and the Rhone; which, nevertheless, can only be understood of the Upper Meuse, since Brabant was certainly not comprised in it. Lothaire, the elder brother, besides Italy, had a kingdom called Lorraine, from his name (Lotharingia), extending from the mouth of the Rhine to Provence, bounded by that river on one frontier, by France on the other. Louis took all beyond the Rhine, and was usually styled The Germanic.

k These kingdoms were denominated Provence and Transjurane Burgundy. The latter was very small, comprising only part of Switzerland; but its second sovereign, Rodolph II., acquired by treaty almost the whole of the former; and the two united were called the kingdom of Arles. This lasted from 933 to 1032, when Rodolph III. bequeathed his dominions to the Emperor Conrad II.—Art de vérifier les Dates, tom. ii. pp. 427-432.

l The family of Capet is generally admitted to possess the most ancient pedigree of any sovereign line in Europe. Its succession through males is unequivocally deduced from Robert the Brave, made governor of Anjou in 864, and father of Eudes King of France, and of Robert, who was chosen by a party in 922, though, as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the royal list. It is, moreover, highly probable that Robert the Brave was descended, equally through males, from St. Arnoul, who died in 640, and consequently nearly allied to the Carlovingian family, who derive their pedigree from the same head.—See Preuves de la Généalogie de Hughes Capet, in l'Art de vérifier les Dates, tom. i. p. 566.

nobles, who, with the nominal fidelity of the feudal system, maintained its practical independence and rebellious spirit.*m*

These were times of great misery to the people, and the worst, perhaps, that Europe has ever known. Even under Charlemagne, we have abundant proofs of the calamities which the people suffered. The light which shone around him was that of a consuming fire. The free proprietors who had once considered themselves as only called upon to resist foreign invasion, were harassed by endless expeditions, and dragged away to the Baltic Sea, or the banks of the Drave. Many of them, as we learn from his Capitularies, became ecclesiastics to avoid military conscription.*n* But far worse must have been their state under the lax government of succeeding times, when the dukes and counts, no longer checked by the vigorous administration of Charlemagne, were at liberty to play the tyrants in their several territories, of which they now became almost the sovereigns. The poorer landholders accordingly were forced to bow their necks to the yoke; and, either by compulsion or through hope of being better protected, submitted their independent patrimonies to the feudal tenure.

But evils still more terrible than these political abuses were the lot of those nations who had been subject to Charlemagne. They, indeed, may appear to us little better than ferocious barbarians; but they were exposed to the assaults of tribes, in comparison of whom they must be deemed humane and polished. Each frontier of the empire had to dread the attack of an enemy. The coasts of Italy were continually alarmed by the Saracens of Africa, who possessed themselves of Sicily and Sardinia, and became masters of the Mediterranean Sea.*o*

m [Note XII.]
At the close of the ninth century there were twenty-nine hereditary fiefs of the crown. At the accession of Hugh Capet, in 987, they had increased to fifty-five. (Guizot, Civilis en France, Leçon 24.) Thierry maintains that those between the Loire and the Pyrenees were strictly independent and bound by no feudal tie. (Lettres sur l'Hist. de France, Lett. IX.)

n Capitularia, A.D. 805. Whoever possessed three mansi of allodial property was called upon for personal service, or at least to furnish a substitute. Nigellus, author of a poetical Life of Louis I., seems to implicate Charlemagne himself in some of the oppressions of his reign. It was the first care of the former to redress those who had been injured in his father's time.—Recueil des Historiens, tome vi. N.B. I quote by this title the great collection of French historians, charters and other documents illustrative of the middle ages, more commonly known by the name of its first editor, the Benedictine Bouquet. But as several learned men of that order were successively concerned in this work, not one half of which has yet been published, it seemed better to follow its own title-page.

o These African Saracens belonged to the Aglabites, a dynasty that reigned at Tunis for the whole of the ninth century, after throwing off the yoke of the Abbassite Khalifs. They were overthrown themselves in the next age by the Fatimites. Sicily was first invaded in 827; but the city of Syracuse was only reduced in 878.

Though the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Rome [A.D. 846-849]; nor was there any security even in the neighborhood of the maritime Alps, where, early in the tenth century, they settled a piratical colony.[p]

Much more formidable were the foes by whom Germany was assailed. The Sclavonians, a widely extended people, whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia,[q] on the eastern confines of the empire, and from the time of Charlemagne acknowledged its superiority. But at the end of the ninth century, a Tartarian tribe, the Hungarians, overspreading that country which since has borne their name, and moving forward like a vast wave, brought a dreadful reverse upon Germany. Their numbers were great, their ferocity untamed. They fought with light cavalry and light armor, trusting to their showers of arrows, against which the swords and lances of the European armies could not avail. The memory of Attila was renewed in the devastations of these savages, who, if they were not his compatriots, resembled them both in their countenances and customs. All Italy, all Germany, and the south of France felt this scourge;[r] till Henry the Fowler, and Otho the Great, drove them back by successive victories within their own limits [A.D. 934-954], where, in a short time, they learned peaceful arts, adopted the religion and followed the policy of Christendom.

If any enemies could be more destructive than these Hungarians, they were the pirates of the north, known commonly by the name of Normans. The love of a predatory life seems to have attracted adventurers of different nations to the Scandi-

[p] Muratori, Annali d'Italia, ad. ann. 906, et alibi. These Saracens of Frassineto, supposed to be between Nice and Monaco, were extirpated by a count of Provence in 972. But they had established themselves more inland than Frassineto. Creeping up the line of the Alps, they took possession of St. Maurice, in the Valais, from which the feeble kings of Transjurane Burgundy could not dislodge them.

[q] I am sensible of the awkward effect of introducing this name from a more ancient geography, but it saves a circumlocution still more awkward. Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

[r] In 924 they overran Languedoc. Raymond-Pons, Count of Toulouse, cut their army to pieces; but they had previously committed such ravages, that the bishops of that province, writing soon afterwards to Pope John X., assert that scarcely any eminent ecclesiastics, out of a great number, were left alive. —Hist. de Languedoc, tome ii. p. 60. They penetrated into Guienne, as late as 951.—Flodoardi Chronicon, in Recueil des Historiens, tome viii. In Italy they inspired such terror that a mass was composed expressly deprecating this calamity: Ab Ungarorum nos defendas jaculis! In 937 they ravaged the country as far as Benevento and Capua.—Muratori, Ann. d'Italia.

navian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany. The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia. For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings, and those of the Heptarchy, as in subsequent times. Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth century,[s] till the age of Charlemagne. In 787 the Danes, as we call those northern plunderers, began to infest England, which lay most immediately open to their incursions. Soon afterwards they ravaged the coasts of France. Charlemagne repulsed them by means of his fleets; yet they pillaged a few places during his reign. It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels, which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire.[t] In Louis's reign their depredations upon the coast were more incessant,[u] but they did not penetrate into the inland country till that of Charles the Bald. The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some of Charles's enemies, laid all open to their inroads. They adopted an uniform plan of warfare both in France and England; sailing up navigable rivers in their vessels of small burden, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and a place of retreat from superior force. After pillaging a town they retired to these strongholds or to their ships; and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate. Sixteen years afterwards they laid siege to Paris, and committed the most ruinous devas-

s Greg. Turon. l. iii. c. 3.

t In the ninth century the Norman pirates not only ravaged the Balearic isles, and nearer coasts of the Mediterranean, but even Greece.—De Marca, Marca Hispanica, p. 327.

u Nigellus, the poetical biographer of Louis, gives the following description of the Normans:—

Nort quoque Francisco dicuntur nomine *manni*.
Veloces, agiles, armigerique nimis:
Ipse quidem populus latè pernotus habetur,
Lintre dapes quærit, incolitatque mare.
Pulcher adest facie, vultuque statuque decorus.—l. iv.

He goes on to tell us that they worshipped Neptune—Was it a similarity of name, or of attributes, that deceived him?

tations on the neighboring country. As these Normans were unchecked by religious awe, the rich monasteries, which had stood harmless amidst the havoc of Christian war, were overwhelmed in the storm. Perhaps they may have endured some irrecoverable losses of ancient learning; but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away. St. Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold. All the chief abbeys were stripped about the same time, either by the enemy, or for contributions to the public necessity. So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver to subsidize a body of Normans against their countrymen. The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices, to which reviving thirst of plunder soon put an end. At length Charles the Simple, in 918, ceded a great province, which they had already partly occupied, partly rendered desolate, and which has derived from them the name of Normandy. Ignominious as this appears, it proved no impolitic step. Rollo, the Norman chief, with all his subjects, became Christians and Frenchmen; and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists.*v*

The accession of Hugh Capet had not the immediate effect of restoring the royal authority over France. [A.D. 987.] His own very extensive fief was now, indeed, united to the crown; but a few great vassals occupied the remainder of the kingdom. Six of these obtained, at a subsequent time, the exclusive appellation of peers of France,—the Count of Flanders, whose fief stretched from the Scheldt to the Somme; the Count of Champagne; the Duke of Normandy, to whom Brittany did homage; the Duke of Burgundy, on whom the Count of Nivernois seems to have depended; the Duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou, Limousin, and most of Guienne, with the feudal superiority over the Angoumois, and some other central districts; and lastly the Count of Toulouse, who possessed Lan-

v An exceedingly good sketch of these Norman incursions, and of the political situation of France during that period, may be found in two Memoirs by M. Bonamy, Mém. de l'Acad. des Inscript. tomes xv. and xvii. These I have chiefly followed in the text. [Note XIII.]

guedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne.[w] Besides these six, the Duke of Gascony, not long afterwards united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the Viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings.[x] This was the aristocracy, of which Hugh Capet usurped the direction; for the suffrage of no general assembly gave a sanction to his title. On the death of Louis V. he took advantage of the absence of Charles, Duke of Lorraine, who, as the deceased king's uncle, was nearest heir, and procured his own consecration at Rheims. At first he was by no means acknowledged in the kingdom; but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity.[y] But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed. For a long period before and after the accession of that family France has, properly speaking, no national history. The character or fortune of those who were called its kings were little more important to the majority of the nation than those of foreign princes. [Robert, A.D. 996; Henry I., 1031; Philip, 1060.] Undoubtedly, the degree of influence which they exercised with respect to the vassals of the crown varied according to their power and their proximity. Over Guienne and Toulouse the first four Capets had very little authority; nor do they seem to have ever received assistance from them either in civil or national wars.[z] With prov-

w Auvergne changed its feudal superior twice. It had been subject to the Duke of Aquitaine till about the middle of the tenth century. The counts of Toulouse then got possession of it; but early in the twelfth century the counts of Auvergne again did homage to Guienne. It is very difficult to follow the history of these fiefs.

x The immediacy of vassals in times so ancient is open to much controversy. I have followed the authority of those industrious Benedictines, the editors of L'Art de vérifier les Dates.

y The south of France not only took no part in Hugh's elevation, but long refused to pay him any obedience, or rather to acknowledge his title, for obedience was wholly out of the question. The style of charters ran, instead of the king's name, *Deo regnante, rege expectante*, or *absente rege terreno*. He forced Guienne to submit about 990. But in Limousin they continued to acknowledge the sons of Charles of Lorraine till 1009.—Vaissette, Hist. de Lang. t. ii. pp. 120, 150. Before this Toulouse had refused to recognize Eudes and Raoul, two kings of France who were not of the Carlovingian family, and even hesitated about Louis IV. and Lothaire, who had an hereditary right.—*Idem.*

These proofs of Hugh Capet's usurpation seem not to be materially invalidated by a dissertation in the 50th volume of the Academy of Inscriptions, p. 553. It is not of course to be denied that the northern parts of France acquiesced in his assumption of the royal title, if they did not give an express consent to it.

z I have not found any authority for supposing that the provinces south of the Loire contributed their assistance to the king in war, unless the following

inces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from the policy of independent states than from the relation of a sovereign towards his subjects.*a*

It should be remembered that, when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each of these contained many barons, possessing exclusive immunities within their own territories, waging war at their pleasure, administering justice to their military tenants and other subjects, and free from all control beyond the conditions of the feudal compact.*b* At the accession of Louis VI. in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain. A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital. It cost Louis a great deal of trouble to reduce the lords of Montlhéry, and other places within a few miles of Paris. Under this prince, however, who had more activity than his prede-

passage of Gulielmus Pictaviensis be considered as matter of fact, and not rather as a rhetorical flourish. He tells us that a vast army was collected by Henry I. against the Duke of Normandy: Burgundium, Arverniam, atque Vasconiam properare videres horribiles ferro; immo vires tanti regni quantum in climata quatuor mundi patent cunctas.—Recueil des Historiens, t. xi. p. 83. But we have the roll of the army which Louis VI. led against the Emperor Henry V., A.D. 1120, in a national war: and it was entirely composed of troops from Champagne, the Isle of France, the Orleannois, and other provinces north of the Loire.—Velly, t. iii. p. 62. Yet this was a sort of convocation of the ban; Rex ut eum tota Francia sequatur, invitat. Even so late as the reign of Philip Augustus, in a list of the knights bannerets of France, though those of Brittany, Flanders, Champagne, and Burgundy, besides the royal domains, are enumerated, no mention is made of the provinces beyond the Loire.—Du Chesne, Script. Rerum Gallicarum, t. v. p. 262.

a [Note XIV.]

b In a subsequent chapter I shall illustrate at much greater length the circumstances of the French monarchy with respect to its feudal vassals. It would be inconvenient to anticipate the subject at present, which is rather of a legal than narrative character.

Sismondi has given a relative scale of the great fiefs, according to the number of modern departments which they contained. At the accession of Louis VI. the crown possessed about five departments; the Count of Flanders held four; the Count of Vermandois, two; the Count of Boulogne, one; the Count of Champagne, six; the Duke of Burgundy, three; of Normandy, five; of Brittany, five; the Count of Anjou, three. Thirty-three departments south of the Loire he considers as hardly connected with the crown; and twenty-one were at that time dependent on the empire. (Vol. v. p. 7.) It is to be understood of course that these divisions are not rigorously exact; and also that, in every instance, owners of fiefs with civil and criminal jurisdiction had the full possession of their own territories, subject more or less to their immediate lord, whether it were the king or another. The real domain of Louis VI. was almost confined to the five towns—Paris, Orleans, Estampes, Melun, and Compiegne (id. p. 86); and to estates, probably large, in their neighborhood.

cessors, the royal authority considerably revived. From his reign we may date the systematic rivalry of the French and English monarchies. Hostilities had several times occurred between Philip I. and the two Williams; but the wars that began under Louis VI. lasted, with no long interruption, for three centuries and a half, and form, indeed, the most leading feature of French history during the middle ages.[c] Of all the royal vassals, the dukes of Normandy were the proudest and most powerful. Though they had submitted to do homage, they could not forget that they came in originally by force, and that in real strength they were fully equal to their sovereign. Nor had the conquest of England any tendency to diminish their pretensions.[d]

Louis VII. ascended the throne with better prospects than his father. [A.D. 1137.] He had married Eleanor, heiress of the great duchy of Guienne. But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess. Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II. of England, who, already inheriting Normandy from his mother and Anjou from his father, became possessed of more than one-half of France, and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy. One might venture, perhaps, to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry.

But the scene quite changed when Philip Augustus, son of Louis VII., came upon the stage. [A.D. 1180.] No prince comparable to him in systematic ambition and military enterprise had reigned in France since Charlemagne. From his reign the French monarchy dates the recovery of its lustre. He wrested from the Count of Flanders the Vermandois (that part of Picardy which borders on the Isle of France and Champagne[e]), and subsequently, the county of Artois. But the most

c Velly, t. iii. p. 40.

d The Norman historians maintain that their dukes did not owe any service to the King of France, but only simple homage, or, as it was called, per paragium.—Recueil des Historiens, t. xi. pref. p. 161. They certainly acted upon this principle; and the manner in which they first came into the country is not very consistent with dependence.

e The original counts of Vermandois were descended from Bernard, King of Italy, grandson of Charlemagne: but their fief passed by the donation of Isa-

important conquests of Philip were obtained against the kings of England. [Conquest of Normandy, 1203.] Even Richard I., with all his prowess, lost ground in struggling against an adversary not less active, and more politic, than himself. But when John not only took possession of his brother's dominions, but confirmed his usurpation by the murder, as was very probably surmised, of the heir, Philip, artfully taking advantage of the general indignation, summoned him as his vassal to the court of his peers. John demanded a safe-conduct. Willingly, said Philip; let him come unmolested. And return? inquired the English envoy. If the judgment of his peers permit him, replied the king. By all the saints of France, he exclaimed, when further pressed, he shall not return unless acquitted. The Bishop of Ely still remonstrated that the Duke of Normandy could not come without the King of England; nor would the barons of that country permit their sovereign to run the risk of death or imprisonment. What of that, my lord bishop? cried Philip. It is well known that my vassal the Duke of Normandy acquired England by force. But if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights? *f*

It may be doubted whether, in thus citing John before his court, the King of France did not stretch his feudal sovereignty beyond its acknowledged limits. Arthur was certainly no immediate vassal of the crown for Brittany; and, though he had done homage to Philip for Anjou and Maine, yet a subsequent treaty had abrogated his investiture, and confirmed his uncle in the possession of those provinces.*g* But the vigor of Philip, and the meanness of his adversary, cast a shade over all that might be novel or irregular in these proceedings. John, not appearing at his summons, was declared guilty of felony, and his fiefs confiscated. The execution of this sentence was not intrusted to a dilatory arm. Philip poured his troops into Normandy, and took town after town, while the King of England, infatuated by his own wickedness and cowardice, made hardly an attempt at defence. In two years Normandy, Maine, and Anjou were irrecoverably lost. Poitou and Guienne resisted longer; but the conquest of the first was completed by

bel, the last countess, to her husband, the Earl of Flanders, after her death in 1183. The principal towns of the Vermandois are St. Quentin and Peronne. —Art de vérifier les Dates, t. ii. p. 700.

f Matthew of Paris, p. 238, edit. 1684.

g The illegality of Philip's proceedings is well argued by Mably, Observations sur l'Histoire de France, l. iii. c. 6.

Louis VIII., successor of Philip [A.D. 1223], and the subjection of the second seemed drawing near, when the arms of Louis were diverted to different but scarcely less advantageous objects.

The country of Languedoc, subject to the counts of Toulouse, had been unconnected, beyond any other part of France, with the kings of the house of Capet. Louis VII., having married his sister to the reigning count, and travelled himself through the country, began to exercise some degree of authority, chiefly in confirming the rights of ecclesiastical bodies, who were vain, perhaps, of this additional sanction to the privileges which they already possessed.[h] But the remoteness of their situation, with a difference in language and legal usages, still kept the people of this province apart from those of the north of France.

About the middle of the twelfth century, certain religious opinions, which it is not easy, nor, for our present purpose, material to define, but, upon every supposition, exceedingly adverse to those of the church,[i] began to spread over Languedoc. Those who imbibed them have borne the name of Albigeois, though they were in no degree peculiar to the district of Albi. In despite of much preaching and some persecution, these errors made a continual progress; till Innocent III., in 1198, despatched commissaries, the seed of the inquisition, with ample powers both to investigate and to chastise. Raymond VI., Count of Toulouse, whether inclined towards the innovators, as was then the theme of reproach, or, as is more probable, disgusted with the insolent interference of the pope and his missionaries, provoked them to pronounce a sentence of excommunication against him. [A.D. 1208.] Though this was taken off, he was still suspected; and upon the assassination of one of the inquisitors, in which Raymond had no concern, Innocent published a crusade both against the count

h According to the Benedictine historians, Vich and Vaissette, there is no trace of any act of sovereignty exercised by the kings of France in Languedoc from 955, when Lothaire confirmed a charter of his predecessor Raoul in favor of the Bishop of Puy, till the reign of Louis VII. (Hist. de Languedoc, tome iii. p. 88.) They have published, however, an instrument of Louis VI. in favor of the same church, confirming those of former princes. (Appendix, p. 473.) Neither the counts of Toulouse, nor any lord of the province, were present in a very numerous national assembly, at the coronation of Philip I. (Id. p. 200.) I do not recollect to have ever met with the name of the Count of Toulouse as a subscribing witness to the charters of the first Capetian kings in the Recueil des Historiens, where many are published, though that of the Duke of Guienne sometimes occurs.

i For the real tenets of the Languedocian sectaries I refer to the last chapter of the present work, where the subject will be taken up again.

and his subjects, calling upon the King of France, and the nobility of that kingdom, to take up the cross, with all the indulgences usually held out as allurements to religious warfare. Though Philip would not interfere, a prodigious number of knights undertook this enterprise, led partly by ecclesiastics, and partly by some of the first barons in France. It was prosecuted with every atrocious barbarity which superstition, the mother of crimes, could inspire. Languedoc, a country, for that age, flourishing and civilized, was laid waste by these desolators; her cities burned; her inhabitants swept away by fire and the sword. And this was to punish a fanaticism ten thousand times more innocent than their own, and errors which, according to the worst imputations, left the laws of humanity and the peace of social life unimpaired.*j*

The crusaders were commanded by Simon de Montfort, a man, like Cromwell, whose intrepidity, hypocrisy, and ambition, marked him for the hero of a holy war. The energy of such a mind, at the head of an army of enthusiastic warriors, may well account for successes which then appeared miraculous. But Montfort was cut off before he could realize his ultimate object, an independent principality; and Raymond was able to bequeath the inheritance of his ancestors to his son. Rome, however, was not yet appeased; upon some new pretence she raised up a still more formidable enemy against the younger Raymond. Louis VIII. suffered himself to be diverted from the conquest of Guienne, to take the cross against the supposed patron of heresy. After a short and successful war, Louis, dying prematurely, left the crown of France to a son only twelve years old. But the Count of Toulouse was still pursued, till, hopeless of safety in so unequal a struggle, he concluded a treaty upon very hard terms. By this he ceded the greater part of Languedoc; and, giving his daughter in marriage to Alphonso, brother of Louis IX., confirmed to them, and to the king in failure of their descendants, the reversion of the rest, in exclusion of any other children whom he might have. Thus fell the ancient house of Toulouse,

j The Albigensian war commenced with the storming of Beziers, and a massacre wherein 15,000 persons, or, according to some narrations, 60,000, were put to the sword. Not a living soul escaped, as witnesses assure us. It was here that a Cistertian monk, who led on the crusaders, answered the inquiry, how the Catholics were to be distinguished from heretics: "Kill them all! God will know his own." Besides Vaissette, see Sismondi, Littérature du Midi, t. i. p. 201.

through one of those strange combinations of fortune, which thwart the natural course of human prosperity, and disappoint the plans of wise policy and beneficent government.*k*

The rapid progress of royal power under Philip Augustus and his son had scarcely given the great vassals time to reflect upon the change which it produced in their situation. The crown, with which some might singly have measured their forces, was now an equipoise to their united weight. And such an union was hard to be accomplished among men not always very sagacious in policy, and divided by separate interests and animosities. They were not, however, insensible to the crisis of their feudal liberties; and the minority of Louis IX., guided only by his mother, the regent, Blanche of Castile, seemed to offer a favorable opportunity for recovering their former situation. Some of the most considerable barons, the counts of Brittany, Champagne, and La Marche, had, during the time of Louis VIII., shown an unwillingness to push the Count of Toulouse too far, if they did not even keep up a secret understanding with him. They now broke out into open rebellion; but the address of Blanche detached some from the league, and her firmness subdued the rest. For the first fifteen years of Louis's reign, the struggle was frequently renewed; till repeated humiliations convinced the refractory that the throne was no longer to be shaken. A prince so feeble as Henry III. was unable to afford them that aid from England, which, if his grandfather or son had then reigned, might probably have lengthened these civil wars.

But Louis IX. had methods of preserving his ascendency very different from military prowess. That excellent prince was perhaps the most eminent pattern of unswerving probity and Christian strictness of conscience that ever held the sceptre

k The best account of this crusade against the Albigeois is to be found in the third volume of Vaissette's History of Languedoc; the Benedictine spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy. Velly, Hist. de France, t. iii., has abridged this work.

M. Fauriel edited for the Collection des Documens Inédits, in 1837, a metrical history of the Albigensian crusade, by a contemporary calling himself William of Tudela, which seems to be an imaginary name. It contains 9578 verses. The author begins as a vehement enemy of the heretics and favorer of the crusade; but becomes, before his poem is half completed, equally adverse to Montfort, Folquet, and the other chiefs of the persecution, though never adopting heretical opinions.

Sismondi says—bitterly, but not untruly—of Simon de Montfort:—"Habile guerrier, austère dans ses mœurs fanatique dans sa religion, inflexible, cruel, et perfide, il réunissait toutes les qualités qui pouvaient plaire à un moine." (Vol. vi. p. 297.) The Albigensian sectaries had insulted the clergy and hissed St. Bernard; which, of course, exasperated that irritable body and aggravated their revenge. (Michelet, iii. 306.) But the atrocities of that war have hardly been equalled, and Sismondi was not the man to conceal them.

in any country. There is a peculiar beauty in the reign of St. Louis, because it shows the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius. For nearly half a century that he governed France there is not the smallest want of moderation or disinterestedness in his actions; and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors. To the surprise of his own and later times, he restored great part of his conquests to Henry III., whom he might naturally hope to have expelled from France. It would indeed have been a tedious work to conquer Guienne, which was full of strong places; and the subjugation of such a province might have alarmed the other vassals of his crown. But it is the privilege only of virtuous minds to perceive that wisdom resides in moderate counsels: no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power. An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in, the dissensions which broke out among the principal vassals; Louis constantly employed himself to reconcile them. In this, too, his benevolence had all the effects of farsighted policy. It had been the practice of his three last predecessors to interpose their mediation in behalf of the less powerful classes, the clergy, the inferior nobility, and the inhabitants of chartered towns. Thus the supremacy of the crown became a familiar idea; but the perfect integrity of St. Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator. And as the royal authority was hitherto shown only in its most amiable prerogatives, the dispensation of favor, and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy.

It was perhaps fortunate for the display of St. Louis's virtues that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII. A century earlier his mild and scrupulous character, unsustained by great actual power, might not have inspired sufficient awe. But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery, qualities without which every other virtue would have been ineffectual, that no

one thought it safe to run wantonly into rebellion, while his disinterested administration gave no one a pretext for it. Hence the latter part of his reign was altogether tranquil, and employed in watching over the public peace and the security of travellers; administering justice personally, or by the best counsellors; and compiling that code of feudal customs called the Establishments of St. Louis, which is the first monument of legislation after the accession of the house of Capet. Not satisfied with the justice of his own conduct, Louis aimed at that act of virtue which is rarely practised by private men, and had perhaps no example among kings—restitution. Commissaries were appointed to inquire what possessions had been unjustly annexed to the royal domain during the last two reigns. These were restored to the proprietors, or, where length of time had made it difficult to ascertain the claimant, their value was distributed among the poor.*l*

It has been hinted already that all this excellence of heart in Louis IX. was not attended with that strength of understanding, which is necessary, we must allow, to complete the usefulness of a sovereign. During his minority Blanche of Castile, his mother, had filled the office of Regent with great courage and firmness. But after he grew up to manhood, her influence seems to have passed the limit which gratitude and piety would have assigned to it; and, as her temper was not very meek or popular, exposed the king to some degree of contempt. He submitted even to be restrained from the society of his wife Margaret, daughter of Raymond Count of Provence, a princess of great virtue and conjugal affection. Joinville relates a curious story, characteristic of Blanche's arbitrary conduct, and sufficiently derogatory to Louis.*m*

But the principal weakness of this king, which almost effaced all the good effects of his virtues, was superstition. It would be idle to sneer at those habits of abstemiousness and mortification which were part of the religion of his age, and, at the worst, were only injurious to his own comfort. But he had other prejudices, which, though they may be forgiven, must never be defended. No man was ever more impressed

l Velly, tom. v. p. 150. This historian has very properly dwelt for almost a volume on St. Louis's internal administration; it is one of the most valuable parts of his work. Joinville is a real witness, on whom, when we listen, it is impossible not to rely.—Collection des Mémoires relatifs à l'Histoire de France, tom. ii. pp. 140-156.

m Collection des Mémoires, tom. ii. p. 241.

than St. Louis with a belief in the duty of exterminating all enemies to his own faith. With these he thought no layman ought to risk himself in the perilous ways of reasoning, but to make answer with his sword as stoutly as a strong arm and a fiery zeal could carry that argument.[n] Though, fortunately for his fame, the persecution against the Albigeois, which had been the disgrace of his father's short reign, was at an end before he reached manhood, he suffered an hypocritical monk to establish a tribunal at Paris for the suppression of heresy, where many innocent persons suffered death.

But no events in Louis's life were more memorable than his two crusades, which lead us to look back on the nature and circumstances of that most singular phenomenon in European history. Though the crusades involved all the western nations of Europe, without belonging particularly to any one, yet, as France was more distinguished than the rest in most of those enterprises, I shall introduce the subject as a sort of digression from the main course of French history.

Even before the violation of Palestine by the Saracen arms it had been a prevailing custom among the Christians of Europe to visit those scenes rendered interesting by religion, partly through delight in the effects of local association, partly in obedience to the prejudices or commands of superstition. These pilgrimages became more frequent in later times, in spite, perhaps in consequence, of the danger and hardships which attended them. For a while the Mohammedan possessors of Jerusalem permitted, or even encouraged, a devotion which they found lucrative; but this was interrupted whenever the ferocious insolence with which they regarded all infidels got the better of their rapacity. During the eleventh century, when, from increasing superstition and some particular fancies, the pilgrims were more numerous than ever, a change took place in the government of Palestine, which was overrun by the Turkish hordes from the North. These bar-

[n] Aussi vous dis je, me dist le roy, que nul, si n'est grant clerc, et theologien parfait, ne doit disputer aux Juifs: mais doit l'homme lay, quant il oit mesdire de la foy Chrétienne, defendre la chose, non pas seulement des paroles, mais à bonne espée tranchant, et en frapper les médisans et mescreans a travers le corps tant qu'elle y pourra entrer.—Joinville, in Collection des Mémoires, tom. i. p. 23. This passage, which shows a tolerable degree of bigotry, did not require to be strained farther still by Mosheim, vol. iii. p. 273 (edit. 1803). I may observe, by the way, that this writer, who sees nothing in Louis IX. except his intolerance, ought not to have charged him with issuing an edict in favor of the inquisition in 1229, when he had not assumed the government.

barians treated the visitors of Jerusalem with still greater contumely, mingling with their Mohammedan bigotry, a consciousness of strength and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenceless palmers. When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout, which, though wanting as yet any definite means of satisfying itself, was ripe for whatever favorable conjuncture might arise.

Twenty years before the first crusade Gregory VII. had projected the scheme of embodying Europe in arms against Asia—a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II., who in everything loved to imitate his great predecessor.*o* This design of Gregory was founded upon the supplication of the Greek emperor Michael, which was renewed by Alexius Comnenus to Urban with increased importunity. The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople. Everyone knows whose hand held the torch to that inflammable mass of enthusiasm that pervaded Europe; the hermit of Picardy, who, roused by witnessed wrongs and imagined visions, journeyed from land to land, the apostle of an holy war. The preaching of Peter was powerfully seconded by Urban. In the councils of Piacenza and of Clermont the deliverance of Jerusalem was eloquently recommended and exultingly undertaken. "It is the will of God!" was the tumultuous cry that broke from the heart and lips of the assembly at Clermont; and these words afford at once the most obvious and most certain explanation of the leading principle of the crusades. Later writers, incapable of sympathizing with the blind fervor of zeal, or anxious to find a pretext for its effect somewhat more congenial to the spirit of our times, have sought political reasons for that which resulted only from predominant affections. No suggestion of these will, I believe, be found in contemporary historians. To rescue the Greek empire from its imminent peril, and thus to secure Christendom from enemies who professed towards it eternal hostil-

o Gregory addressed, in 1074, a sort of encyclic letter to all who would defend the Christian faith, enforcing upon them the duty of taking up arms against the Saracens, who had almost come up to the walls of Constantinople. No mention of Palestine is made in this letter. Labbé, Concilia, t. x. p. 44. St. Marc, Abrégé Chron. de l'Hist. de l'Italie, t. iii. p. 614.

ity, might have been a legitimate and magnanimous ground of interference; but it operated scarcely, or not at all, upon those who took the cross. It argues, indeed, strange ignorance of the eleventh century to ascribe such refinements of later times even to the princes of that age. The Turks were no doubt repelled from the neighborhood of Constantinople by the crusaders; but this was a collateral effect of their enterprise. Nor had they any disposition to serve the interest of the Greeks, whom they soon came to hate, and not entirely without provocation, with almost as much animosity as the Moslems themselves.

Every means was used to excite an epidemical frenzy: the remission of penance, the dispensation from those practices of self-denial which superstition imposed or suspended at pleasure, the absolution of all sins, and the assurance of eternal felicity. None doubted that such as perished in the war received immediately the reward of martyrdom.[p] False miracles and fanatical prophecies, which were never so frequent, wrought up the enthusiasm to a still higher pitch. And these devotional feelings, which are usually thwarted and balanced by other passions, fell in with every motive that could influence the men of that time; with curiosity, restlessness, the love of license, thirst for war, emulation, ambition. Of the princes who assumed the cross, some probably from the beginning speculated upon forming independent establishments in the East. In later periods the temporal benefits of undertaking a crusade undoubtedly blended themselves with less selfish considerations. Men resorted to Palestine, as in modern times they have done to the colonies, in order to redeem their fame, or repair their fortune. Thus Gui de Lusignan, after flying from France, for murder, was ultimately raised to the throne of Jerusalem. To the more vulgar class were held out inducements which, though absorbed in the overruling fanaticism of the first crusade, might be exceedingly efficacious when it began rather to flag. During the time that a crusader bore the cross he was free from suit for his debts, and the interest of them was entirely abolished; he was exempted, in some instances at least, from taxes, and placed under the protection

[p] Nam qui pro Christi nomine decertantes, in acie fidelium et Christianâ militiâ dicuntur, occumbere, non solum infamiæ, verum et peccaminum et delictorum omnimodam credimus abolitionem promereri. Will. Tyr. l. x. c. 20.

of the church, so that he could not be impleaded in any civil court, except on criminal charges, or disputes relating to land.[q]

None of the sovereigns of Europe took a part in the first crusade; but many of their chief vassals, great part of the inferior nobility, and a countless multitude of the common people. The priests left their parishes, and the monks their cells; and though the peasantry were then in general bound to the soil, we find no check given to their emigration for this cause. Numbers of women and children swelled the crowd; it appeared a sort of sacrilege to repel anyone from a work which was considered as the manifest design of Providence. But if it were lawful to interpret the will of Providence by events, few undertakings have been more branded by its disapprobation than the crusades. So many crimes and so much misery have seldom been accumulated in so short a space as in the three years of the first expedition. We should be warranted by contemporary writers in stating the loss of the Christians alone during this period at nearly a million; but at the least computation it must have exceeded half that number.[r] To engage in the crusade, and to perish in it, were almost synonymous. Few of those myriads who were mustered in the plains of Nice returned to gladden their friends in Europe with the story of their triumph at Jerusalem. Besieging alternately and besieged in Antioch, they drained to the lees the cup of misery: three hundred thousand sat down before that place; next year there remained but a sixth part to pursue the enterprise. But their losses were least in the field of battle; the intrinsic superiority of European prowess was constantly displayed; the angel of Asia, to apply the bold language of our poet, high and unmatchable, where her rival was not, became a fear; and the Christian lances bore all before them in their shock from Nice to Antioch, Edessa, and Jerusalem. [A.D. 1099.] It was here, where their triumph was consummated, that it was stained with the most atrocious massacre; not limited to the hour of resistance, but renewed deliberately even after that famous penitential pro-

[q] Otho of Frisengen, c. 35, has inserted a bull of Eugenius III. in 1146, containing some of these privileges. Others are granted by Philip Augustus in 1214. Ordonnances des Rois de France, tom. i. See also Du Cange, voc. Crucis Privilegia.

[r] William of Tyre says that at the review before Nice there were found 600,000 of both sexes, exclusive of 100,000 cavalry armed in mail. L. ii. c. 23. But Fulk of Chartres reckons the same number, besides women, children, and priests. An immense slaughter had previously been made in Hungary of the rabble under Gaultier Sans-Avoir.

cession to the holy sepulchre, which might have calmed their ferocious dispositions, if, through the misguided enthusiasm of the enterprise, it had not been rather calculated to excite them.[s]

The conquests obtained at such a price by the first crusade were chiefly comprised in the maritime parts of Syria. Except the state of Edessa beyond the Euphrates,[t] which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus their arms might be feared, but their power was never established; and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem with its feudal dependencies of Tripoli and Tiberias to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, Count of Apulia, the other to Godfrey of Boulogne,[u] whose extraordinary merit had justly raised him to a degree of influence with the chief crusaders that has been sometimes confounded with a legitimate authority.[v] In the course of a few years Tyre, Ascalon, and the other cities upon the sea-coast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed, by the western storm, the Latins were constantly molested by the Mohammedans of Egypt and Syria. They were exposed as the outposts of Christendom, with no respite and few resources. A second crusade, in which the Emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diver-

s The work of Mailly, entitled L'Esprit des Croisades, is deserving of considerable praise for its diligence and impartiality. It carries the history, however, no farther than the first expedition. Gibbon's two chapters on the crusades, though not without inaccuracies, are a brilliant portion of his great work. The original writers are chiefly collected in two folio volumes, entitled Gesta Dei per Francos, Hanover, 1611.

t Edessa was a little Christian principality, surrounded by, and tributary to, the Turks. The inhabitants invited Baldwin, on his progress in the first crusade, and he made no great scruple of supplanting the reigning prince, who indeed is represented as a tyrant and usurper. Esprit des Croisades, t. iv. p. 62. De Guignes, Hist. des Huns, tom. ii. pp. 135-162.

u Godfrey never took the title of King of Jerusalem, not choosing, he said, to wear a crown of gold in that city where his Saviour had been crowned with thorns. Baldwin, Godfrey's brother, who succeeded him within two years, entitles himself, Rex Hierusalem, Latinorum primus. Will. Tyr. l. ii. c. 12.

v The heroes of the crusade are just like those of romance. Godfrey is not only the wisest but the strongest man in the army. Perhaps Tasso has lost some parts of this physical superiority for the sake of contrasting him with the imaginary Rinaldo. He cleaves a Turk in twain, from the shoulder to the haunch. A noble Arab, after the taking of Jerusalem, requests him to try his sword upon a camel, when Godfrey, with ease, cuts off the head. The Arab, suspecting there might be something peculiar in the blade, desires him to do the same with his sword; and the hero obliges him by demolishing a second camel. Will. Tyr. l. ix. c. 22.

sion [A.D. 1147]; and that vast army wasted away in the passage of Natolia.*w*

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the Orientals, and to the union of the Mohammedan principalities under a single chief.*x* Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three, the inadequacy of their means of self-defence. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of eight hundred and sixty-six knights, attended each by four archers on horseback, by a militia of five thousand and seventy-five burghers, and by a conscription, in great exigencies, of the remaining population.*y* William of Tyre mentions an army of one thousand three hundred horse and fifteen thousand foot, as the greatest which had ever been collected, and predicts the utmost success from it, if wisely conducted.*z* This was a little before the irruption of Saladin. In the last fatal battle Lusignan seems to have had somewhat a larger force.*a* Nothing can more strikingly evince the ascendency of Europe than the resistance of these Frankish acquisitions in Syria during nearly two hundred years. Several of their victories over the Moslems were obtained against such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance.*b* These perhaps were less due to the descendants of

w Vertot puts the destruction in the second crusade at two hundred thousand men (Hist. de Malthe, p. 129); and from William of Tyre's language, there seems no reason to consider this an exaggeration. L. xvi. c. 19.

x L. xxi. c. 7. John of Vitry also mentions the change of weapons by the Saracens, in imitation of the Latins, using the lances and coat of mail instead of bows and arrows, c. 92. But, according to a more ancient writer, part of Soliman's (the Kilidge Arslan of De Guignes) army in the first crusade was in armor, loricis et galeis et clypeis aureis valde armati. Albertus Aquensis, l. ii. c. 27. I may add to this a testimony of another kind, not less decisive. In the Abbey of St. Denis there were ten pictures, in stained glass, representing sieges and battles in the first crusade. These were made by order of Suger, the minister of Louis VI., and consequently in the early part of the twelfth century. In many of them the Turks are painted in coats of mail, sometimes even in a plated cuirass. In others they are quite unarmed, and in flowing robes. Montfaucon, Monumens de la Monarchie Française, t. i. pl. 50.

y Gibbon, c. 29, note 125. Jerusalem itself was very thinly inhabited. For all the heathens, says William of Tyre, had perished in the massacre when the city was taken; or, if any escaped, they were not allowed to return; no heathen being thought fit to dwell in the holy city. Baldwin invited some Arabian Christians to settle in it.

z L. xxii. c. 27.

a A primo introitu Latinorum in terram sanctam, says John de Vitry, nostri tot milites in uno prœlio congregare nequiverunt. Erant enim mille ducenti milites loricati; peditum autem cum armis, arcubus et balistis circiter viginti millia, infaustæ expeditioni interfuisse dicuntur. Gesta Dei per Francos, p. 1118.

b A brief summary of these victories is given by John of Vitry, c. 93.

the first crusaders, settled in the Holy Land,[c] than to those volunteers from Europe whom martial ardor and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe; and in this sense the crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders the most renowned were the military orders of the Knights of the Temple and of the Hospital of St. John;[d] instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land. The Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valor.[e] At length the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the king and the kingdom fell into his hands [A.D. 1187]; nothing remained but a few strong towns upon the sea-coast.

These misfortunes roused once more the princes of Europe, and the third crusade was undertaken by three of her sovereigns, the greatest in personal estimation as well as dignity—by the Emperor Frederic Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. [A.D. 1189.] But this, like the preceding enterprise, failed of permanent effect; and those feats of romantic prowess which made the name of Richard so famous both in Europe and Asia[f] proved only the total inefficacy of all exertions in an at-

c Many of these were of a mongrel extraction, descended from a Frank parent on one side, and Syrian on the other. These were called Poulains, Pullani; and were looked upon as a mean, degenerate race. Du Cange; Gloss. v. Pullani; and Observations sur Joinville, in Collection des Mémoires relatifs à l'Histoire de France, t. ii. p. 190.

d The St. John of Jerusalem was neither the Evangelist nor yet the Baptist, but a certain Cypriot, surnamed the Charitable, who had been patriarch of Alexandria.

e See a curious instance of the misconduct and insolence of the Templars, in William of Tyre, l. xx. c. 32. The Templars possessed nine thousand manors, and the Knights of St. John nineteen thousand, in Europe. The latter were almost as much reproached as the Templars for their pride and avarice. L. xviii. c. 6.

f When a Turk's horse started at a bush, he would chide him, Joinville says, with, Cuides-tu qu'y soit le roi Richard! Women kept their children quiet with the threat of bringing Richard to them.

tempt so impracticable; Palestine was never the scene of another crusade. One great armament was diverted to the siege of Constantinople [A.D. 1204], and another wasted in fruitless attempts upon Egypt. [A.D. 1218.] The Emperor Frederic II. afterwards procured the restoration of Jerusalem by the Saracens; but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns. Acre, the last of these, was finally taken by storm in 1291; and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect.

The two last crusades were undertaken by St. Louis. [A.D. 1248.] In the first he was attended by 2,800 knights and 50,000 ordinary troops.g He landed at Damietta in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city. But advancing up the country, he found natural impediments as well as enemies in his way; the Turks assailed him with Greek fire, an instrument of warfare almost as surprising and terrible as gunpowder; he lost his brother the Count of Artois, with many knights, at Massoura, near Cairo; and began too late a retreat towards Damietta. Such calamities now fell upon this devoted army as have scarce ever been surpassed; hunger and want of every kind, aggravated by an unsparing pestilence. At length the king was made prisoner, and very few of the army escaped the Turkish cimeter in battle or in captivity. Four hundred thousand livres were paid as a ransom for Louis. He returned to France, and passed nearly twenty years in the exercise of those virtues which are his best title to canonization. But the fatal illusions of superstition were still always at his heart; nor did it fail to be painfully observed by his subjects that he still kept the cross upon his garment. His last expedition was originally designed for Jerusalem. But he had received some intimation that the King of Tunis was desirous of embracing Christianity. That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city. A fever here put an end to his life, sacrificed to that ruling passion which never would have forsaken him. But he had survived the spirit of the cru-

g The Arabian writers give him 9500 knights and 130,000 common soldiers. But I greatly prefer the authority of Joinville, who has twice mentioned the number of knights in the text. On Gibbon's authority, I put the main body at 50,000; but, if Joinville has stated this, I have missed the passage. Their vassals amounted to 1800.

sades; the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly; *h* his son, after making terms with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes in subsequent ages talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs; but soon after the accession of Philip III. [A.D. 1270] (surnamed the Bold) it received a far more considerable augmentation. Alphonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III., together with part of Auvergne and of Saintonge; and held also, as has been said before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond VII. Upon his death, and that of his countess, which happened about the same time, the king entered into possession of all these territories. [A.D. 1271.] This acquisition brought the sovereigns of France into contact with new neighbors, the kings of Aragon and the powers of Italy. The first great and lasting foreign war which they carried on was that of Philip III. and Philip IV. against the former kingdom, excited by the insurrection of Sicily. [A.D. 1270.] Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs.

There still remained five great and ancient fiefs of the French crown; Champagne, Guienne, Flanders, Burgundy, and Brittany. But Philip IV. [A.D. 1285], usually called the Fair, married the heiress of the first, a little before his father's death;

h The refusal of Joinville to accompany the king in this second crusade is very memorable, and gives us an insight into the bad effects of both expeditions. Le Roy de France et le Roy de Navarre me pressoient fort de me croiser, et entreprendre, le chemin du pelerinage de la croix. Mais je leur respondi, que tendis que j'avoie esté oultre-mer au service de Dieu, que les gens et officers du Roy de France avoient trop grevé et foullé mes subjets, tant qu'ils en estoient apovris; tellement que jamès il ne seroit que eulx et moy ne nous en sortissons. Et veoie clerement, si je me mectoie au pelerinage de la croix, que ce seroit la totale destruction de mesdiz povres subjets. Depuis ouy-je dire a plusieurs, que ceux qui luy conseillerent l'enterprinse de la croix firent un trez grant mal, et pecherent mortellement. Car tandis qu'il fust au royaume de France, tout son royaume vivoit en paix, et regnoit justice. Et incontinent qu'il en fust ors, tout commença à décliner et à empirer.—T. ii. p. 158.

In the Fabliaux of Le Grand d'Aussy we have a neat poem by Rutubœuf, a writer of St. Louis's age, in a dialogue between a crusader and a non-crusader, wherein, though he gives the last word to the former, it is plain that he designed the opposite scale to preponderate.—T. ii. p. 163.

and although he governed that county in her name without pretending to reunite it to the royal domain, it was, at least in a political sense, no longer a part of the feudal body. With some of his other vassals Philip used more violent methods. A parallel might be drawn between this prince and Philip Augustus. But while in ambition, violence of temper and unprincipled rapacity, as well as in the success of their attempts to establish an absolute authority, they may be considered as nearly equal, we may remark this difference, that Philip the Fair, who was destitute of military talents, gained those ends by dissimulation which his predecessor had reached by force.

The duchy of Guienne, though somewhat abridged of its original extent, was still by far the most considerable of the French fiefs, even independently of its connection with England.*i* Philip, by dint of perfidy, and by the egregious incapacity of Edmund, brother of Edward I., contrived to obtain, and to keep for several years, the possession of this great province. A quarrel among some French and English sailors having provoked retaliation, till a sort of piratical war commenced between their respective countries, [A.D. 1292] Edward, as Duke of Guienne, was summoned into the king's court to answer for the trespass of his subjects. Upon this he despatched his brother to settle terms of reconciliation, with fuller powers than should have been intrusted to so credulous a negotiator. Philip so outwitted this prince, through a fictitious treaty, as to procure from him the surrender of all the fortresses in Guienne. He then threw off the mask, and after again summoning Edward to appear, pronounced the confiscation of his fief.*j* This business is the greatest blemish in the political character of Edward. But his eagerness about the acquisition of Scotland rendered him less sensible to the danger of a possession in many respects more valuable; and the spirit of resist-

i Philip was highly offended that instruments made in Guienne should be dated by the year of Edward's reign, and not of his own. This almost sole badge of sovereignty had been preserved by the kings of France during all the feudal ages. A struggle took place about it, which is recorded in a curious letter from John de Greilli to Edward. The French court at last consented to let dates be thus expressed: Actum fuit, regnante P. rege Franciæ, E. rege Angliæ tenente ducatum Aquitaniæ. Several precedents were shown by the English where the counts of Toulouse had used the form, Regnante A. Comite Tolosæ. Rymer, t. ii. p. 1083. As this is the first time that I quote Rymer, it may be proper to observe that my references are to the London edition, the paging of which is preserved on the margin of that printed at the Hague.

j In the view I have taken of this transaction I have been guided by several instruments in Rymer, which leave no doubt on my mind. Velly of course represents the matter more favorably for Philip.

ance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip, to thwart every effort for the recovery of Guienne by arms. [A.D. 1303.] But after repeated suspensions of hostilities a treaty was finally concluded, by which Philip restored the province, on the agreement of a marriage between his daughter Isabel and the heir of England.

To this restitution he was chiefly induced by the ill success that attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavored to confiscate. We have not, perhaps, as clear evidence of the original injustice of his proceedings towards the Count of Flanders as in the case of Guienne; but he certainly twice detained his person, once after drawing him on some pretext to his court, and again, in violation of the faith pledged by his generals. The Flemings made, however, so vigorous a resistance, that Philip was unable to reduce that small country; and in one famous battle at Courtray they discomfited a powerful army with that utter loss and ignominy to which the undisciplined impetuosity of the French nobles was pre-eminently exposed.[k] [A.D. 1302.]

Two other acquisitions of Philip the Fair deserve notice; that of the counties of Angoulême and La Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count; and that of the city of Lyons, and its adjacent territory, which had not even feudally been subject to the crown of France for more than three hundred years. Lyons was the dowry of Matilda, daughter of Louis IV., on her marriage with Conrad, King of Burgundy, and was bequeathed with the rest of that kingdom by Rodolph, in 1032, to the empire. Frederic Barbarossa conferred upon the Archbishop of Lyons all regalian rights over the city, with the title of Imperial Vicar. France seems to have had no concern with it, till St. Louis was called in as a mediator in disputes between the chapter and the city, during a vacancy of the see, and took the exercise of jurisdiction upon himself for the time. Philip III., having been chosen arbitrator in similar circumstances, insisted, before he would restore the jurisdiction, upon an oath of fealty from the new archbishop. This oath, which could be demanded, it seems, by no right but that

[k] The Flemings took at Courtray 4000 pair of gilt spurs, which were only worn by knights. These Velly, happily enough, compares to Hannibal's three bushels of gold rings at Cannæ.

of force, continued to be taken, till, in 1310, an archbishop resisting what he had thought an usurpation, the city was besieged by Philip IV., and, the inhabitants not being unwilling to submit, was finally united to the French crown.*l*

Philip the Fair left three sons, who successively reigned in France; Louis, surnamed Hutin [Louis X., A.D. 1314], Philip the Long, and Charles the Fair; with a daughter, Isabel, married to Edward II. of England.*m* Louis, the eldest, survived his father little more than a year, leaving one daughter, and his queen pregnant. The circumstances that ensued require to be accurately stated. Louis had possessed, in right of his mother, the kingdom of Navarre, with the counties of Champagne and Brie. Upon his death, Philip, his next brother [Philip V., A.D. 1315], assumed the regency both of France and Navarre; and not long afterwards entered into a treaty with Eudes, Duke of Burgundy, uncle of the Princess Jane, Louis's daughter, by which her eventual rights to the succession were to be regulated. It was agreed that, in case the queen should be delivered of a daughter, these two princesses, or the survivor of them, should take the grandmother's inheritance, Navarre and Champagne, on releasing all claim to the throne of France. But this was not to take place till their age of consent, when, if they should refuse to make such renunciation, their claim was to remain, and right to be done to them therein; but, in return, the release made by Philip of Navarre and Champagne was to be null. In the meantime, he was to hold the government of France, Navarre, and Champagne, receiving homage of vassals in all these countries as governor; saving the right of a male heir to the late king, in the event of whose birth the treaty was not to take effect.*n*

This convention was made on the 17th of July, 1316; and on the 15th of November the queen brought into the world a son, John I. (as some called him), who died in four days.*o* The conditional treaty was now become absolute; in spirit, at least, if any cavil might be raised about the expression; and Philip was, by his own agreement, precluded from taking any

l Velly, t. vii. p. 404. For a more precise account of the political dependence of Lyons and its district, see L'Art de vérifier les Dates, t. ii. p. 469.

m [Note XV.]

n Hist. de Charles le Mauvais par Sécousse, vol. ii. p. 2.

o Ancient writers, Sismondi tells us (ix. 344), do not call this infant anything but the child who was to be king; the maxim of later times, "Le roi ne meurt pas," was unknown. I suspect, nevertheless, that the strict hereditary succession was better recognized before this time than Sismondi here admits; compare what he says afterwards of a period very little later, vol. xi. 6.

other title than that of regent or governor, until the princess Jane should attain the age to concur in or disclaim the provisional contract of her uncle. Instead of this, however, he procured himself to be consecrated at Rheims; though, on account of the avowed opposition of the Duke of Burgundy, and even of his own brother Charles, it was thought prudent to shut the gates during the ceremony, and to dispose guards throughout the town. Upon his return to Paris, an assembly composed of prelates, barons, and burgesses of that city, was convened, who acknowledged him as their lawful sovereign, and, if we may believe an historian, expressly declared that a woman was incapable of succeeding to the crown of France.*p* The Duke of Burgundy, however, made a show of supporting his niece's interests, till, tempted by the prospect of a marriage with the daughter of Philip, he shamefully betrayed her cause, and gave up in her name, for an inconsiderable pension, not only her disputed claim to the whole monarchy, but her unquestionable right to Navarre and Champagne.*q* I have been rather minute in stating these details, because the transaction is misrepresented by every historian, not excepting those who have written since the publication of the documents which illustrate it.*r*

In this contest, every way memorable, but especially on account of that which sprung out of it, the exclusion of females from the throne of France was first publicly discussed. The French writers almost unanimously concur in asserting that such an exclusion was built upon a fundamental maxim of their government. No written law, nor even, as far as I know, the direct testimony of any ancient writer, has been brought forward to confirm this position. For as to the text of the Salic law, which was frequently quoted, and has indeed given a name to this exclusion of females, it can only by a doubtful and refined analogy be considered as bearing any relation to the succession of the crown. It is certain nevertheless that,

p Tunc etiam declaratum fuit, quod in regno Franciæ mulier non succedit. Contin. Gul. Nangis, in Spicilegio d'Achery, tom. iii. This monk, without talents, and probably without private information, is the sole contemporary historian of this important period. He describes the assembly which confirmed Philip's possession of the crown;—quamplures proceres et regni nobiles ac magnates unâ cum plerisque prælatis et burgensibus Parisiensis civitatis.

q Hist. de Charles le Mauvais, t. ii. p. 6. Jane, and her husband the Count of Evreux, recovered Navarre, after the death of Charles the Fair.

r Velly, who gives several proofs of disingenuousness in this part of history, mutilates the treaty of the 17th of July, 1316, in order to conceal Philip the Long's breach of faith towards his niece.

from the time of Clovis, no woman had ever reigned in France; and although not an instance of a sole heiress had occurred before, yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have shared with their brothers in partitions then commonly made.[s] But, on the other hand, these times were gone quite out of memory, and France had much in the analogy of her existing usages to reconcile her to a female reign. The crown resembled a great fief; and the great fiefs might universally descend to women. Even at the consecration of Philip himself, Maud, Countess of Artois, held the crown over his head among the other peers.[t] And it was scarcely beyond the recollection of persons living that Blanche had been legitimate regent of France during the minority of St. Louis.

For these reasons, and much more from the provisional treaty concluded between Philip and the Duke of Burgundy, it may be fairly inferred that the Salic law, as it was called, was not so fixed a principle at that time as has been contended. But however this may be, it received at the accession of Philip the Long a sanction which subsequent events more thoroughly confirmed. Philip himself leaving only three daughters, his brother Charles mounted the throne [Charles IV., A.D. 1322]; and upon his death the rule was so unquestionably established, that his only daughter was excluded by the Count of Valois, grandson of Philip the Bold. This prince first took the regency, the queen-dowager being pregnant, and, upon her giving birth to a daughter, was crowned king. [A.D. 1328.] No competitor or opponent appeared in France; but one more formidable than any whom France could have produced was awaiting the occasion to prosecute his imagined right with all the resources of valor and genius, and to carry desolation over

s The treaty of Andely, in 587, will be found to afford a very strong presumption that females were at that time excluded from reigning in France. Greg. Turon. l. ix.

t The continuator of Nangis says indeed of this, de quo aliqui indignati fuerunt. But these were probably the partisans of her nephew Robert, who had been excluded by a judicial sentence of Philip IV., on the ground that the right of representation did not take place in Artois; a decision considered by many as unjust. Robert subsequently renewed his appeal to the court of Philip of Valois; but, unhappily for himself, yielded to the temptation of forging documents in support of a claim which seems to have been at least plausible without such aid. This unwise dishonesty, which is not without parallel in more private causes, not only ruined his pretensions to the county of Artois, but produced a sentence of forfeiture, and even of capital punishment, against himself. See a pretty good account of Robert's process in Velly, t. viii. p. 262.

Sismondi (x. 44) does not seem to be convinced that Robert of Artois was guilty of forgery; but perhaps he is led away by his animosity against kings, especially those of the house of Valois. M. Michelet informs us (v. 30) that the deeds produced by the demoiselle Divion, on which Robert founded his claims, are in the Trésor des Chartes, and palpable forgeries.

that great kingdom with as little scruple as if he was preferring a suit before a civil tribunal.

From the moment of Charles IV.'s death, Edward III. of England buoyed himself up with a notion of his title to the crown of France, in right of his mother Isabel, sister to the three last kings. We can have no hesitation in condemning the injustice of this pretension. Whether the Salic law were or were not valid, no advantage could be gained by Edward. Even if he could forget the express or tacit decision of all France, there stood in his way Jane, the daughter of Louis X., three of Philip the Long, and one of Charles the Fair. Aware of this, Edward set up a distinction, that, although females were excluded from succession, the same rule did not apply to their male issue; and thus, though his mother Isabel could not herself become Queen of France, she might transmit a title to him. But this was contrary to the commonest rules of inheritance; and if it could have been regarded at all, Jane had a son, afterwards the famous King of Navarre, who stood one degree nearer to the crown than Edward.

It is asserted in some French authorities that Edward preferred a claim to the regency immediately after the decease of Charles the Fair, and that the States-General, or at least the peers of France, adjudged that dignity to Philip de Valois. Whether this be true or not, it is clear that he entertained projects of recovering his right as early, though his youth and the embarrassed circumstances of his government threw insuperable obstacles in the way of their execution.[u] He did liege homage, therefore, to Philip for Guienne, and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprise. As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature, and produced a series of the most important and interesting revolutions in the fortunes of France. These will form the subject of the ensuing pages.

[u] Letter of Edward III. addressed to certain nobles and towns in the south of France, dated March 28, 1328, four days before the birth of Charles IV.'s posthumous daughter, intimates this resolution. Rymer, vol. iv. p. 344 et seq. But an instrument, dated at Northampton on the 16th of May, is decisive: This is a procuration to the bishops of Worcester and Litchfield, to demand and take possession of the kingdom of France, "in our name, which kingdom has devolved and appertains to us as to the right heir." P. 354. To this mission Archbishop Stratford refers, in his vindication of himself from Edward's accusation of treason in 1340; and informs us that the two bishops actually proceeded to France, though without mentioning any further particulars. Novit enim qui nihil ignorat, quod cum quæstio de regno Franciæ post mortem regis Caroli, fratris serenissimæ matris vestræ, in parliamento tunc apud

PART II.

War of Edward III. in France—Causes of his Success—Civil Disturbances of France—Peace of Bretigni—Its Interpretation Considered—Charles V.—Renewal of the War—Charles VI.—His Minority and Insanity—Civil Dissensions of the Parties of Orleans and Burgundy—Assassination of both these Princes—Intrigues of their Parties with England under Henry IV.—Henry V. Invades France—Treaty of Troyes—State of France in the First Years of Charles VII.—Progress and Subsequent Decline of the English Arms—Their Expulsion from France—Change in the Political Constitution—Louis XI.—His Character—Leagues Formed against him—Charles Duke of Burgundy—His Prosperity and Fall—Louis Obtains Possession of Burgundy—His Death—Charles VIII.—Acquisition of Brittany.

No war had broken out in Europe, since the fall of the Roman Empire, so memorable as that of Edward III. and his successors against France, whether we consider its duration, its object, or the magnitude and variety of its events. It was a struggle of one hundred and twenty years, interrupted but once by a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize, twice

Northampton celebrato, tractata discussaque fuisset; quodque idem regnum Franciæ ad vos hæreditario jure extiterat legitimè devolutum; et super hoc fuit ordinatum, quod duo episcopi, Wigorniensis tunc, nunc autem Wintoniensis, ac Coventriensis et Lichfeldensis in Franciam dirigerent gressus suos, nomineque vestro regnum Franciæ vindicarent et prædicti Philippi de Valesio coronationem pro viribus impedirent; qui juxta ordinationem prædictam legationem iis injunctam tunc assumentes, gressus suos versus Franciam direxerunt; quæ quidem legatio maximam guerræ præsentis materiam ministravit. Wilkins, Concilia, t. i. p. 664.

There is no evidence in Rymer's Fœdera to corroborate Edward's supposed claim to the regency of France upon the death of Charles IV.; and it is certainly suspicious that no appointment of ambassadors or procurators for this purpose should appear in so complete a collection of documents. The French historians generally assert this, upon the authority of the continuator of William of Nangis, a nearly contemporary, but not always well-informed writer. It is curious to compare the four chief English historians. Rapin affirms both the claim to the regency on Charles IV.'s death, and that to the kingdom after the birth of his daughter. Carte, the most exact historian we have, mentions the latter, and is silent as to the former. Hume passes over both, and intimates that Edward did not take any steps in support of his pretensions in 1328. Henry gives the supposed trial of Edward's claim to the regency before the States-General at great length, and makes no allusion to the other, so indisputably authenticated in Rymer. It is, I think, most probable that the two bishops never made the formal demand of the throne as they were directed by their instructions. Stratford's expressions seem to imply that they did not.

Sismondi does not mention the claim of Edward to the regency after the death of Charles IV., though he supposes his pretensions to have been taken into consideration by the lords and doctors of law, whom he asserts, following the continuator of William of Nangis, to have consulted together, before Philip of Valois took the title of regent. (Vol. x. p. 10.) Michelet, more studious of effect than minute in details, makes no allusion to the subject.

lost and twice recovered, in the conflict, while individual courage was wrought up to that high pitch which it can seldom display since the regularity of modern tactics has chastised its enthusiasm and levelled its distinctions. There can be no occasion to dwell upon the events of this war, which are familiar to almost every reader: it is rather my aim to develop and arrange those circumstances which, when rightly understood, give the clew to its various changes of fortune.

France was, even in the fourteenth century, a kingdom of such extent and compactness of figure, such population and resources, and filled with so spirited a nobility, that the very idea of subjugating it by a foreign force must have seemed the most extravagant dream of ambition.[a] Yet, in the course of about twenty years of war, this mighty nation was reduced to the lowest state of exhaustion, and dismembered of considerable provinces by an ignominious peace. What was the combination of political causes which brought about so strange a revolution, and, though not realizing Edward's hopes to their extent, redeemed them from the imputation of rashness in the judgment of his own and succeeding ages?

The first advantage which Edward III. possessed in this contest was derived from the splendor of his personal character and from the still more eminent virtues of his son. Besides prudence and military skill, these great princes were endowed with qualities peculiarly fitted for the times in which they lived. Chivalry was then in its zenith; and in all the virtues which adorned the knightly character, in courtesy, munificence, gallantry, in all delicate and magnanimous feelings, none were so conspicuous as Edward III. and the Black Prince. As later princes have boasted of being the best gentlemen, they might claim to be the prowest knights in Europe—a character not quite dissimilar, yet of more high pretension. Their court was, as it were, the sun of that system which embraced the valor and nobility of the Christian world; and the respect which was felt for their excellences, while it drew many to their side, mitigated in all the rancor and ferociousness of hostility. This

a The pope (Benedict XII.) wrote a strong letter to Edward (March, 1340), dissuading him from taking the title and arms of France, and pointing out the impossibility of his ever succeeding. I have no doubt but that this was the common opinion. But the Avignon popes were very subservient to France. Clement VI., as well as his predecessor, Benedict XII., threatened Edward with spiritual arms. Rymer, t. v. pp. 88 and 465. It required Edward's spirit and steadiness to despise these menaces. But the time when they were terrible to princes was rather passed by; and the Holy See never ventured to provoke the king, who treated the church, throughout his reign, with admirable firmness and temper.

war was like a great tournament, where the combatants fought indeed *à outrance*, but with all the courtesy and fair play of such an entertainment, and almost as much for the honor of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters—Manni and the Captal de Buch, Knollys and Calverley, Chandos and Lancaster. On the French side, especially after Du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Philip of Valois, and John his son, showed but poorly in comparison with their illustrious enemies. Yet they both had considerable virtues; they were brave,[b] just, liberal, and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of their predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill-conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs. In the execution of Clisson under Philip, in that of the Connétable d'Eu under John, and still more in that of Harcourt, even in the imprisonment of the King of Navarre, though every one of these might have been guilty of treasons, there were circumstances enough to exasperate the disaffected, and to strengthen the party of so politic a competitor as Edward.

Next to the personal qualities of the King of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms of France, from which, unless upon the best terms, he could not

b The bravery of Philip is not questioned. But a French historian, in order, I suppose, to enhance this quality, has presumed to violate truth in an extraordinary manner. The challenge sent by Edward, offering to decide his claim to the kingdom by single combat, is well known. Certainly it conveys no imputation on the King of France to have declined this unfair proposal. But Velly has represented him as accepting it, on condition that Edward would stake the crown of England against that of France; an interpolation which may be truly called audacious, since not a word of this is in Philip's letter, preserved in Rymer, which the historian had before his eyes, and actually quotes upon the occasion. Hist. de France, t. viii. p. 382.

recede without loss of honor.[c] In the meantime he strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.[d]

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I., and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprise do not seem to have struck the gravest of our countrymen.

c The first instrument in which Edward disallows the title of Philip is his convention with the Emperor Louis of Bavaria, wherein he calls him nunc pro rege Francorum se gerentem. The date of this is August 26, 1337, yet on the 28th of the same month another instrument gives him the title of king; and the same occurs in subsequent instances. At length we have an instrument of procuration to the Duke of Brabant. October 7, 1337, empowering him to take possession of the crown of France in the name of Edward; attendentes inclitum regnum Franciæ ad nos fore jure successionis legitimè devolutum. Another of the same date appoints the said duke his vicar-general and lieutenant of France. The king assumed in this commission the title Rex Franciæ et Angliæ; in other instruments he calls himself Rex Angliæ et Franciæ. It was necessary to obviate the jealousy of the English, who did not, in that age, admit the precedence of France. Accordingly, Edward had two great seals on which the two kingdoms were named in a different order. But, in the royal arms, those of France were always in the first quarter, as they continued to be until the accession of the house of Brunswick.

Probably Edward III. would not have entered into the war merely on account of his claim to the crown. He had disputes with Philip about Guienne; and that prince had, rather unjustifiably, abetted Robert Bruce in Scotland. I am not inclined to lay any material stress upon the instigation of Robert of Artois.

d Michelet dwells on the advantage which Edward gained by the commerce of England with Flanders: "Le secret des batailles de Crecy, de Poitiers, est aux comptoirs des marchands de Londres, de Bordeaux, et de Bourges" (vol. v. p. 6). France had no internal trade; the roads were dangerous on account of robbers, and heavy tolls were to be paid; fiscal officers had replaced the feudal lords. The value of money was perpetually varying far more than in England. (Id. p. 12.) Certainly the comparative prosperity of the latter country supplied Edward with the sinews of war. France could not afford to maintain a well-appointed infantry.

"Une tactique nouvelle," M. Michelet afterwards very well observes (p. 81), "sortait de l'état nouveau de la société; ce n'était pas un œuvre de génie, ni de réflexion. Edouard III. n'était ni un Gustave Adolphe ni un Frédéric II. Il avait employé les fantassins faute de cavaliers. . . . La bataille de Crecy reveilla un secret dont personne ne se doutait, l'impuissance militaire de ce monde féodal, qui s'était cru le seul monde militaire." Courtray might have given some suspicion of this; but Courtray was much less of a "bataille rangée" than Crecy.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers, and Azincourt. So great was the disparity of numbers upon those famous days, that we cannot, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valor. They yielded rather to that intrepid steadiness in danger which had already become the characteristic of our English soldiers, and which, during five centuries, has insured their superiority, whenever ignorance or infatuation has not led them into the field. But these victories, and the qualities that secured them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people. Not the nobility of England, not the feudal tenants won the battles of Crecy and Poitiers; for these were fully matched in the ranks of France; but the yeomen who drew the bow with strong and steady arms, accustomed to use it in their native fields, and rendered fearless by personal competence and civil freedom. It is well known that each of the three great victories was due to our archers, who were chiefly of the middle class, and attached, according to the system of that age, to the knights and squires who fought in heavy armor with the lance. Even at the battle of Poitiers, of which our country seems to have the least right to boast, since the greater part of the Black Prince's small army was composed of Gascons, the merit of the English bowmen is strongly attested by Froissart.*e*

Yet the glorious termination to which Edward was enabled, at least for a time, to bring the contest, was rather the work of fortune than of valor and prudence. Until the battle of Poitiers he had made no progress towards the conquest of France. That country was too vast, and his army too small, for such a revolution. The victory of Crecy gave him nothing but Calais, a post of considerable importance in war and peace,

e Au vray dire, les archres d'Angleterre faisoient à leurs gens grant avantage. Car ils tiroyent tant espessement, que les François ne sçavoyent dequel costé entendre, qu'ils ne fussent consuyvis de trayt; et s'avançoyent tousjours ces Anglois, et petit à petit enqueroyent terre. Part I. c. 162.

It is by an odd oversight that Sismondi has said (x. 295), "Les Anglais étaient accoutumés à se servir sans cesse de *l'arbalète*." The cross-bow was looked upon as a weapon unworthy of a brave man; a prejudice which afterwards prevailed with respect to fire-arms. A romancer praises the Emperor Conrad,

" Par un effort de lance et d'écu,
Conquérant tous ses ennemis,
Y à arbalestreis ni fu mis; "

quoted by Boucher in his translation of Il Consolato del Mare, p. 518. Even the long-bow might incur this censure; or any weapon in which the combatants fought *eminus*. But if we look at the plate-armor of the fifteenth century, it may seem that a knight had not much to boast of the danger to which he exposed himself, especially when encountering infantry.

but rather adapted to annoy than to subjugate the kingdom. But at Poitiers he obtained the greatest of prizes, by taking prisoner the King of France. Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenceless, and seemed to annihilate the monarchy itself. The government was already odious; a spirit was awakened in the people which might seem hardly to belong to the fourteenth century; and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers. Already the States-General had established a fundamental principle, that no resolution could be passed as the opinion of the whole unless each of the three orders concurred in its adoption.[f] The right of levying and regulating the collection of taxes was recognized. But that assembly, which met at Paris immediately after the battle, went far greater lengths in the reform and control of government. From the time of Philip the Fair the abuses natural to arbitrary power had harassed the people. There now seemed an opportunity of redress; and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States, especially the famous Marcel, it is clear that many of their reformations tended to liberty and the public good.[g] But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defence against Edward. These tumults were excited, and the distraction increased, by Charles King of Navarre, surnamed the Bad, to whom the French writers have, not perhaps unjustly, attributed a character of unmixed and inveterate malignity. He was grandson of Louis Hutin, by his daughter Jane, and, if Edward's pretence of claiming through females, could be admitted, was a nearer heir to the crown; the consciousness of which seems to have suggested itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party. John had bestowed his daughter in marriage on the King of Navarre; but he very soon gave a proof of his character by procuring the

f Ordonnances des Rois de France, t. ii.

g I must refer the reader onward to the next chapter for more information on this subject. This separation is inconvenient, but it arose indispensably out of my arrangement and prevented greater inconveniences.

assassination of the king's favorite, Charles de la Cerda. An irreconcilable enmity was the natural result of this crime. Charles became aware that he had offended beyond the possibility of forgiveness, and that no letters of pardon, nor pretended reconciliation, could secure him from the king's resentment. Thus, impelled by guilt into deeper guilt, he entered into alliances with Edward, and fomented the seditious spirit of Paris. Eloquent and insinuating, he was the favorite of the people, whose grievances he affected to pity, and with whose leaders he intrigued. As his paternal inheritance, he possessed the country of Evreux in Normandy. The proximity of this to Paris created a formidable diversion in favor of Edward III., and connected the English garrisons of the North with those of Poitou and Guienne.

There is no affliction which did not fall upon France during this miserable period. A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority. Famine, the sure and terrible companion of war, for several years desolated the country. In 1348 a pestilence, the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword.[h] The companies of adventure, mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country in search of pillage. No force existed sufficiently powerful to check these robbers in their career. Undismayed by superstition, they compelled the pope to redeem himself in Avignon by the

h A full account of the ravages made by this memorable plague may be found in Matteo Villani, the second of that family who wrote the history of Florence. His brother and predecessor, John Villani, was himself a victim to it. The disease began in the Levant about 1346; from whence Italian traders brought it to Sicily, Pisa, and Genoa. In 1348 it passed the Alps and spread over France and Spain; in the next year it reached Britain, and in 1350 laid waste Germany and other northern states; lasting generally about five months in each country. At Florence more than three out of five died. Muratori, Script. Rerum Italicarum, t. xiv. p. 12. The stories of Boccaccio's Decamerone, as is well known, are supposed to be related by a society of Florentine ladies and gentlemen retired to the country during this pestilence.

Another pestilence, only less destructive than the former, wasted both France and England in 1361. Sismondi bitterly remarks (x. 342) that between four and five millions who died of the former plague in France merely diminished the number of the oppressed, producing no perceptible effect. But this is exaggerated. The plague caused a truce of several months. The war was in fact carried on with less vigor for some years. It is, however, by no means unlikely that the number of deaths has been overrated. Nothing can be more loose than the statistical evidence of mediæval writers. Thus 30,000 are said to have died at Narbonne. (Michelet, v. 94.) But had Narbonne so many to lose? At least, would not the depopulation have been out of all proportion to other cities?

payment of forty thousand crowns.*i* France was the passive victim of their license, even after the pacification concluded with England, till some were diverted into Italy, and others led by Du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection. [A.D. 1358.] This was called the Jacquerie, from the cant phrase Jacques Bonhomme, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace.*j*

Subdued by these misfortunes, though Edward had made but slight progress towards the conquest of the country, the regent of France, afterwards Charles V., submitted to the peace of Bretigni. [A.D. 1360.] By this treaty, not to mention less important articles, all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the county of Ponthieu, were ceded in full sovereignty to Edward; a price abundantly compensating his renunciation of the title of France, which was the sole concession stipulated in return. Every care seems to have been taken to make the cession of

i Froissart, p. 187. This troop of banditti was commanded by Arnaud de Cervole, surnamed l'Archiprêtre, from a benefice which, although a layman, he possessed, according to the irregularity of those ages. See a memoir on the life of Arnaud de Cervole, in the twenty-fifth volume of the Academy of Inscriptions.

j The second continuator of Nangis, a monk of no great abilities, but entitled to notice as our most contemporary historian, charges the nobility with spending the money raised upon the people by oppressive taxes, in playing at dice, "et alios indecentes jocos." D'Achery, Spicilegium, t. iii. p. 114 (folio edition). All the miseries that followed the battle of Poitiers he ascribes to bad government and neglect of the commonweal: but especially to the pride and luxury of the nobles. I am aware that this writer is biassed in favor of the King of Navarre; but he was an eye-witness of the people's misery, and perhaps a less exceptionable authority than Froissart, whose love of pageantry and habits of feasting in the castles of the great seem to have produced some insensibility towards the sufferings of the lower classes. It is a painful circumstance, which Froissart and the continuator of Nangis attest, that the citizens of Calais, more interesting than the common heroes of history, were unrewarded, and begged their bread in misery throughout France. Villaret contradicts this, on the authority of an ordinance which he has seen in their favor. But that was not a time when ordinances were very sure of execution. Vill. t. ix. p. 470. I must add that the celebrated story of the six citizens of Calais, which has of late been called in question, receives strong confirmation from John Villani, who died very soon afterwards. L. xii. c. 96. Froissart of course wrought up the circumstances after this manner. In all the coloring of his history he is as great a master as Livy, and as little observant of particular truth. M. de Bréquigny, almost the latest of those excellent antiquaries whose memoirs so much illustrate the French Academy of Inscriptions, has discussed the history of Calais, and particularly this remarkable portion of it. Mém. de l'Académie des Inscriptions, t. i.

Petrarch has drawn a lamentable picture of the state of France in 1360, when he paid a visit to Paris. I could not believe, he says, that this was the same kingdom which I had once seen so rich and flourishing. Nothing presented itself to my eyes but a fearful solitude, an extreme poverty, lands uncultivated, houses in ruins. Even the neighborhood of Paris manifested everywhere marks of destruction and conflagration. The streets are deserted; the roads overgrown with weeds: the whole is a vast solitude. Mém. de Pétrarque, t. iii. p. 541.

these provinces complete. The first six articles of the treaty expressly surrender them to the King of England. By the seventh, John and his son engaged to convey within a year from the ensuing Michaelmas all their rights over them, and especially those of sovereignty and feudal appeal. The same words are repeated still more emphatically in the eleventh and some other articles. The twelfth stipulates the exchange of mutual renunciations; by John, of all right over the ceded countries; by Edward, of his claim to the throne of France. At Calais the treaty of Bretigni was renewed by John, who, as a prisoner, had been no party to the former compact, with the omission only of the twelfth article, respecting the exchange of renunciations. But that it was not intended to waive them by this omission is abundantly manifest by instruments of both the kings, in which reference is made to their future interchanges at Bruges, on the feast of St. Andrew, 1361. And, until that time should arrive, Edward promises to lay aside the title and arms of France (an engagement which he strictly kept[k]), and John to act in no respect as king or suzerain over the ceded provinces. Finally, on November 15, 1361, two commissioners are appointed by Edward to receive the renunciations of the King of France at Bruges on the ensuing feast of St. Andrew,[l] and to do whatever might be mutually required by virtue of the treaty. These, however, seem to have been withheld, and the twelfth article of the treaty of Bretigni was never expressly completed. By mutual instruments, executed at Calais, October 24, it had been declared that the sovereignty of the ceded provinces, as well as Edward's right to the crown of France, should remain as before, although suspended as to its exercise, until the exchange of renunciations, notwithstanding any words of present conveyance or release in the treaties of Bretigni and Calais. And another pair of letters-patent, dated October 26, contains the form of renunciations, which, it is mutually declared, should have effect by virtue of the present letters, in case one party should be ready to exchange such renunciations at the time and place appointed, and the other should make default therein. These instruments executed at Calais are so prolix, and so studiously enveloped, as it seems, in the obscurity of

[k] Edward gives John the title of King of France in an instrument bearing date at Calais, October 22, 1360. Rymer, t. vi. p. 217. The treaty was signed October 24. Id. p. 219.

[l] Rym. t. vi. p. 339.

technical language, that it is difficult to extract their precise intention. It appears, nevertheless, that whichever party was prepared to perform what was required of him at Bruges on November 30, 1361, the other then and there making default, would acquire not only what our lawyers might call an equitable title, but an actual vested right, by virtue of the provision in the letters-patent of October 26, 1360. The appointment above mentioned of Edward's commissioners on November 15, 1361, seems to throw upon the French the burden of proving that John sent his envoys with equally full powers to the place of meeting, and that the non-interchange of renunciations was owing to the English government. But though an historian, sixty years later (Juvenal des Ursins), asserts that the French commissioners attended at Bruges, and that those of Edward made default, this is certainly rendered improbable by the actual appointment of commissioners made by the King of England on the 15th of November, by the silence of Charles V. after the recommencement of hostilities, who would have rejoiced in so good a ground of excuse, and by the language of some English instruments, complaining that the French renunciations were withheld.*m* It is suggested by the French authors that Edward was unwilling to execute a formal renunciation of his claim to the crown. But we can hardly suppose that, in

m It appears that, among other alleged infractions of the treaty, the King of France had received appeals from Armagnac, Albret, and other nobles of Aquitaine, not long after the peace. For, in February, 1362, a French envoy, the Count de Tancarville, being in England, the privy council presented to Edward their bill of remonstrances against this conduct of France; et semble au conseil le roy d'Angleterre que consideré la fourme de la ditte paix, que tant estoit honourable et proffitable au royaume de France et à toute chrétienté, que la reception desdittes appellacions n'a mie esté bien faite, ne passée si ordenément, ne à si bon affection et amour, comme il droit avoir esté fait de raison parmi l'effet et l'intention de la paix et ailliances affermées et entr'eux semble estre moult prejudiciables et contraires à l'onneur et a l'estat du roy et de son fils le prince et de toute la maison d'Angleterre, et pourra estre evidente matière de rebellion des subgiez, et aussi donner tres-grant occasion d'enfraindre la paix, si bon remede sur ce n'y soit mis plus hastivement. Upon the whole they conclude that if the King of France would repair this trespass, and send his renunciation of sovereignty, the king should send his of the title of France. Martenne, Thes. Anec. t. i. p. 1487.

Four princes of the blood, or, as they are termed, Seigneurs des Fleur de Lys, were detained as hostages for the due execution of the treaty of Bretigni, which, from whatever pretence, was delayed for a considerable time. Anxious to obtain their liberty, they signed a treaty at London in November, 1362, by which, among other provisions, it was stipulated that the King of France should send fresh letters, under his seal, conveying and releasing the territories ceded by the peace, without the clause contained in the former letters, retaining the ressort: et que en ycelles lettres soit expressement compris transport de la souveraineté et du ressort, &c. Et le roi d'Angleterre et ses enfans ferront semblablement autiels renonciations, sur ce q'il doit faire de sa partie. Rymer, t. vi. p. 396. This treaty of London was never ratified by the French government; but I use it as a proof that Edward imputed the want of mutual renunciations to France, and was himself ready to perform his part of the treaty.

order to evade this condition, which he had voluntarily imposed upon himself by the treaties of Bretigni and Calais, he would have left his title to the provinces ceded by those conventions imperfect. He certainly deemed it indefeasible, and acted, without any complaint from the French court, as the perfect master of those countries. He created his son Prince of Aquitaine, with the fullest powers over that new principality, holding it in fief of the crown of England by the yearly rent of an ounce of gold.*n* And the court of that great prince was kept for several years at Bordeaux.

I have gone something more than usual into detail as to these circumstances, because a very specious account is given by some French historians and antiquaries which tends to throw the blame of the rupture in 1368 upon Edward III.*o* Unfounded as was his pretension to the crown of France, and actuated as we must consider him by the most ruinous ambition, his character was unblemished by ill faith. There is no apparent cause to impute the ravages made in France by soldiers formerly in the English service to his instigation, nor any proof of a connection with the King of Navarre subsequently to the peace of Bretigni. But a good lesson may be drawn by conquerors from the change of fortune that befell Edward III. A long warfare, and unexampled success, had procured for him some of the richest provinces of France. Within a short time he was entirely stripped of them, less through any particular misconduct than in consequence of the intrinsic difficulty of preserving such acquisitions. The French were already knit together as one people; and even those

n Rym. t. vi. pp. 385-389. One clause is remarkable; Edward reserves to himself the right of creating the province of Aquitaine into a kingdom. So high were the notions of this great monarch in an age when the privilege of creating new kingdoms was deemed to belong only to the pope and the emperor. Etiam si per nos hujusmodi provinciæ ad regalis honoris titulum et fastigium imposterum sublimentur; quam erectionem faciendam per nos ex tunc specialiter reservamus.

o Besides Villaret and other historians, the reader who feels any curiosity on this subject may consult three memoirs in the 15th volume of the Academy of Inscriptions by MM. Sécousse, Salier, and Bonamy.—These distinguished antiquaries unite, but the third with much less confidence and passion than the other two, in charging the omission upon Edward. The observations in the text will serve, I hope, to repel their arguments, which, I may be permitted to observe, no English writer has hitherto undertaken to answer. This is not said in order to assume any praise to myself; in fact, I have been guided, in a great degree, by one of the adverse counsel, M. Bonamy, whose statement of facts is very fair, and makes me suspect a little that he saw the weakness of his own cause.

The authority of Christine de Pisan, a contemporary panegyrist of the French king, is not, perhaps, very material in such a question; but she seems wholly ignorant of this supposed omission on Edward's side, and puts the justice of Charles V.'s war on a very different basis; namely, that treaties not conducive to the public interest ought not to be kept.—Collection des Mémoires, t. v. p. 137. A principle more often acted upon than avowed!

whose feudal duties sometimes led them into the field against their sovereign could not endure the feeling of dismemberment from the monarchy. When the peace of Bretigni was to be carried into effect, the nobility of the South remonstrated against the loss of the king's sovereignty, and showed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another. The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes, rather than fall under the power of England. John with heaviness of heart persuaded these faithful people to comply with that destiny which he had not been able to surmount. At length they sullenly submitted: we will obey, they said, the English with our lips, but our hearts shall never forget their allegiance.*p* Such unwilling subjects might perhaps have been won by a prudent government; but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause.*q* After the expedition into Castile, a most injudicious and fatal enterprise, he attempted to impose a heavy tax upon Guienne. This was extended to the lands of the nobility, who claimed an immunity from all impositions. Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V., who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge. [A.D. 1368.] After a year's delay the king ventured to summon the Black Prince to answer these charges before the peers of France, and the war immediately recommenced between the two countries.*r*

Though it is impossible to reconcile the conduct of Charles upon this occasion to the stern principles of rectitude which ought always to be obeyed, yet the exceeding injustice of Edward in the former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni. It is observed, indeed, with some truth by Rapin,

p Froissart, part i. chap. 214.

q See an anecdote of his difference with the Seigneur d'Albret, one of the principal barons in Gascony, to which Froissart, who was then at Bordeaux, ascribes the alienation of the southern nobility, chap. 244.—Edward III., soon after the peace of Bretigni, revoked all his grants in Guienne.—Rymer, t. vi. p. 391.

r On November 20, 1368, some time before the summons of the Prince of Wales, a treaty was concluded between Charles and Henry King of Castile, wherein the latter expressly stipulates that whatever parts of Guienne or England he might conquer he would give up to the King of France.—Rymer, t. vi. p. 598.

that we judge of Charles's prudence by the event; and that, if he had been unfortunate in the war, he would have brought on himself the reproaches of all mankind, and even of those writers who are now most ready to extol him. But his measures had been so sagaciously taken, that, except through that perverseness of fortune, against which, especially in war, there is no security, he could hardly fail of success. The elder Edward was declining through age, and the younger through disease; the ceded provinces were eager to return to their native king, and their garrisons, as we may infer by their easy reduction, feeble and ill-supplied. France, on the other hand, had recovered breath after her losses; the sons of those who had fallen or fled at Poitiers were in the field; a king, not personally warlike, but eminently wise and popular, occupied the throne of the rash and intemperate John. She was restored by the policy of Charles V. and the valor of Du Guesclin. This hero, a Breton gentleman without fortune or exterior graces, was the greatest ornament of France during that age. Though inferior, as it seems, to Lord Chandos in military skill, as well as in the polished virtues of chivalry, his unwearied activity, his talent of inspiring confidence, his good fortune, the generosity and frankness of his character, have preserved a fresh recollection of his name, which has hardly been the case with our countryman.

In a few campaigns the English were deprived of almost all their conquests, and even, in a great degree, of their original possessions in Guienne. They were still formidable enemies, not only from their courage and alacrity in the war, but on account of the keys of France which they held in their hands; Bordeaux, Bayonne, and Calais, by inheritance or conquest; Brest and Cherbourg, in mortgage from their allies, the Duke of Brittany and King of Navarre. But the successor of Edward III. was Richard II.; a reign of feebleness and sedition gave no opportunity for prosecuting schemes of ambition. The war, protracted with few distinguished events for several years, was at length suspended by repeated armistices, not, indeed, very strictly observed, and which the animosity of the English would not permit to settle in any regular treaty. Nothing less than the terms obtained at Bretigni, emphatically called the Great Peace, would satisfy a frank and courageous people, who deemed themselves cheated by the man-

ner of its infraction. The war was therefore always popular in England, and the credit which an ambitious prince, Thomas Duke of Gloucester, obtained in that country, was chiefly owing to the determined opposition which he showed to all French connections. But the politics of Richard II. were of a different cast; and Henry IV. was equally anxious to avoid hostilities with France; so that, before the unhappy condition of that kingdom tempted his son to revive the claims of Edward in still more favorable circumstances, there had been thirty years of respite, and even some intervals of friendly intercourse between the two nations. Both, indeed, were weakened by internal discord; but France more fatally than England. But for the calamities of Charles VI.'s reign, she would probably have expelled her enemies from the kingdom. The strength of that fertile and populous country was recruited with surprising rapidity. Sir Hugh Calverley, a famous captain in the wars of Edward III., while serving in Flanders, laughed at the herald, who assured him that the King of France's army, then entering the country, amounted to 26,000 lances; asserting that he had often seen their largest musters, but never so much as a fourth part of the number.* The relapse of this great kingdom under Charles VI. was more painful and perilous than her first crisis; but she recovered from each through her intrinsic and inextinguishable resources.

Charles V., surnamed the Wise, after a reign, which, if we overlook a little obliquity in the rupture of the peace of Bretigni, may be deemed one of the most honorable in French history, dying prematurely, left the crown to his son, a boy of thirteen, under the care of three ambitious uncles, the dukes of Anjou, Berry, and Burgundy. [A.D. 1380.] Charles had retrieved the glory, restored the tranquillity, revived the spirit of his country; the severe trials which exercised his regency after the battle of Poitiers had disciplined his mind; he became a sagacious statesman, an encourager of literature, a beneficent lawgiver. He erred, doubtless, though upon plausible grounds, in accumulating a vast treasure, which the Duke of Anjou seized before he was cold in the grave. But all the fruits of his wisdom were lost in the succeeding reign. In a government essentially popular the youth or imbecility of the sovereign creates no material derangement. In a monarchy, where all

* Froissart, p. ii. c. 142.

the springs of the system depend upon one central force, these accidents, which are sure in the course of a few generations to recur, can scarcely fail to dislocate the whole machine. During the forty years that Charles VI. bore the name of king, rather than reigned in France, that country was reduced to a state far more deplorable than during the captivity of John.

A great change had occurred in the political condition of France during the fourteenth century. As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay; and while more luxurious refinements of living heightened the temptations to profuseness, the means of enjoying them were lessened by improvident alienations of the domain. Hence, taxes, hitherto almost unknown, were levied incessantly, and with all those circumstances of oppression which are natural to the fiscal proceedings of an arbitrary government. These, as has been said before, gave rise to the unpopularity of the two first Valois, and were nearly leading to a complete revolution in the convulsions that succeeded the battle of Poitiers. The confidence reposed in Charles V.'s wisdom and economy kept everything at rest during his reign, though the taxes were still very heavy. But the seizure of his vast accumulations by the Duke of Anjou, and the ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris, and sometimes of other places, to repeated seditions. The States-General not only compelled the government to revoke these impositions and restore the nation, at least according to the language of edicts, to all their liberties, but, with less wisdom, refused to make any grant of money. Indeed a remarkable spirit of democratical freedom was then rising in those classes on whom the crown and nobility had so long trampled. An example was held out by the Flemings, who, always tenacious of their privileges, because conscious of their ability to maintain them, were engaged in a furious conflict with Louis Count of Flanders.[s]

[s] The Flemish rebellion, which originated in an attempt, suggested by bad advisers to the count, to impose a tax upon the people of Ghent without their consent, is related in a very interesting manner by Froissart, p. ii. c. 37, &c., who equals Herodotus in simplicity, liveliness, and power over the heart. I would advise the historical student to acquaint himself with these transactions and with the corresponding tumults at Paris.

They are among the eternal lessons of history; for the unjust encroachments of courts, the intemperate passions of the multitude, the ambition of demagogues, the cruelty of victorious factions, will never cease to have their parallels and their analogies; while the military achievements of distant times

The court of France took part in this war; and after obtaining a decisive victory over the citizens of Ghent, Charles VI. returned to chastise those of Paris.[t] Unable to resist the royal army, the city was treated as the spoil of conquest; its immunities abridged; its most active leaders put to death; a fine of uncommon severity imposed; and the taxes renewed by arbitrary prerogative. But the people preserved their indignation for a favorable moment; and were unfortunately led by it, when rendered subservient to the ambition of others, into a series of crimes, and a long alienation from the interests of their country.

It is difficult to name a limit beyond which taxes will not be borne without impatience, when they appear to be called for by necessity, and faithfully applied; nor is it impracticable for a skilful minister to deceive the people in both these respects. But the sting of taxation is wastefulness. What high-spirited man could see without indignation the earnings of his labor, yielded ungrudgingly to the public defence, become the spoil of parasites and speculators? It is this that mortifies the liberal hand of public spirit; and those statesmen who deem the security of government to depend not on laws and armies, but on the moral sympathies and prejudices of the people, will vigilantly guard against even the suspicion of prodigality. In the present stage of society it is impossible to conceive that degree of misapplication which existed in the French treasury under Charles VI., because the real exigencies of the state could never again be so inconsiderable. Scarcely any military force was kept up; and the produce of the grievous impositions then levied was chiefly lavished upon the royal household,[u] or plundered by the officers of the government.

afford in general no instruction, and can hardly occupy too little of our time in historical studies. The prefaces to the fifth and sixth volumes of the Ordonnances des Rois de France contain more accurate information as to the Parisian disturbances than can be found in Froissart.

t If Charles VI. had been defeated by the Flemings, the insurrection of the Parisians, Froissart says, would have spread over France; toute gentillesse et noblesse eût été morte et perdue en France; nor would the Jacquerie have ever been si grande et si horrible. c. 120. To the example of the Gantois he ascribes the tumults which broke out about the same time in England as well as in France. c. 84. The Flemish insurrection would probably have had more important consequences if it had been cordially supported by the English government. But the danger of encouraging that democratical spirit which so strongly leavened the commons of England might justly be deemed by Richard II.'s council much more than a counterbalance to the advantage of distressing France. When too late, some attempts were made, and the Flemish towns acknowledged Richard as King of France in 1384. Rymer, t. vii. p. 448.

u The expenses of the royal household, which under Charles V. were 94,000 livres, amounted in 1412 to 450,000. Villaret, t. iii. p. 243. Yet the king was so ill supplied that his plate had been pawned. When Montagu, minister of the finances, was arrested, in 1409, all

This naturally resulted from the peculiar and afflicting circumstances of this reign. The Duke of Anjou pretended to be entitled by the late king's appointment, if not by the constitution of France, to exercise the government as regent during the minority;[v] but this period, which would naturally be very short, a law of Charles V. having fixed the age of majority at thirteen, was still more abridged by consent; and after the young monarch's coronation, he was considered as reigning with full personal authority. Anjou, Berry, and Burgundy together with the king's maternal uncle, the Duke of Bourbon, divided the actual exercise of government.

The first of these soon undertook an expedition into Italy, to possess himself of the crown of Naples, in which he perished. Berry was a profuse and voluptuous man, of no great talents; though his rank, and the middle position which he held between struggling parties, made him rather conspicuous throughout the revolutions of that age. The most respectable of the king's uncles, the Duke of Bourbon, being further removed from the royal stem, and of an unassuming character, took a less active part than his three coadjutors. Burgundy, an ambitious and able prince, maintained the ascendency, until Charles, weary of a restraint which had been protracted by his uncle till he was in his twenty-first year, took the reins into his own hands. [A.D. 1387.] The dukes of Burgundy and Berry retired from court, and the administration was committed to a different set of men, at the head of

this plate was found concealed in his house.

v It has always been an unsettled point whether the presumptive heir is entitled to the regency of France; and, if he be so to the regency, whether this includes the custody of the minor's person. The particular case of the Duke of Anjou is subject to a considerable apparent difficulty. Two instruments of Charles V., bearing the same date of October, 1374, as published by Dupuy (Traité de Majorité des Rois, p. 161), are plainly irreconcilable with each other; the former giving the exclusive regency to the Duke of Anjou, reserving the custody of the minor's person to other guardians; the latter conferring not only this custody, but the government of the kingdom, on the queen, and on the dukes of Burgundy and Bourbon, without mentioning the Duke of Anjou's name. Daniel calls these testaments of Charles V., whereas they are in the form of letters-patent; and supposes that the king had suppressed both, as neither party seems to have availed itself of their authority in the discussions that took place after the king's death. (Hist. de France, t. iii. p. 662, edit. 1720.) Villaret, as is too much his custom, slides over the difficulty without notice. But M. de Bréquigni (Mém. de l'Acad. des Inscript. t. l. p. 533) observes that the second of these instruments, as published by M. Sécousse, in the Ordonnances des Rois, t. vi. p. 406, differs most essentially from that in Dupuy, and contains no mention whatever of the government. It is, therefore, easily reconcilable with the first, that confers the regency on the Duke of Anjou. As Dupuy took it from the same source as Sécousse, namely, the Trésor des Chartes, a strong suspicion of wilful interpolation falls upon him, or upon the editor of his posthumous work, printed in 1655. This date will readily suggest a motive for such an interpolation to those who recollect the circumstances of France at that time and for some years before; Anne of Austria having maintained herself in possession of a testamentary regency against the presumptive heir.

whom appeared the Constable De Clisson, a soldier of great fame in the English wars. The people rejoiced in the fall of the princes by whose exactions they had been plundered; but the new ministers soon rendered themselves odious by similar conduct. The fortune of Clisson, after a few years' favor, amounted to 1,700,000 livres, equal in weight of silver, to say nothing of the depreciation of money, to ten times that sum at present.[w]

Charles VI. had reigned five years from his assumption of power, when he was seized with a derangement of intellect [A.D. 1393], which continued, through a series of recoveries and relapses, to his death. He passed thirty years in a pitiable state of suffering, neglected by his family, particularly by the most infamous of women, Isabel of Bavaria, his queen, to a degree which is hardly credible.[x] The ministers were immediately disgraced; the princes reassumed their stations. For several years the Duke of Burgundy conducted the government. But this was in opposition to a formidable rival, Louis, Duke of Orleans, the king's brother. It was impossible that a prince so near to the throne, favored by the queen, perhaps with criminal fondness, and by the people on account of his external graces, should not acquire a share of power. He succeeded at length in obtaining the whole management of affairs; wherein the outrageous dissoluteness of his conduct, and still more the excessive taxes imposed, rendered him altogether odious. The Parisians compared his administration with that of the Duke of Burgundy; and from that time ranged themselves on the side of the latter and his family, throughout the long distractions to which the ambition of these princes gave birth.

The death of the Duke of Burgundy, in 1404, after several fluctuations of success between him and the Duke of Orleans, by no means left his party without a head. Equally brave and ambitious, but far more audacious and unprincipled, his son John, surnamed Sanspeur, sustained the same contest. A reconciliation had been, however, brought about with the Duke

w Froissart, p. iv. c. 46.

x Sismondi inclines to speak more favorably of this queen than most have done: "Dans les temps postérieurs on s'est plu à faire un monstre de Isabeau de Bavière." He discredits the suspicion of a criminal intercourse with the Duke of Orleans, and represents her as merely an indolent woman fond of good cheer. Yet he owns that the king was so neglected as to suffer from an excessive want of cleanliness, sometimes even from hunger (xii. 218, 225). Was this no imputation on his wife? See too Michelet, vi. 42.

of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony, the Duke of Orleans was assassinated in the streets of Paris. [A.D. 1407.] After a slight attempt at concealment, Burgundy avowed and boasted of the crime, to which he had been instigated, it is said, by somewhat more than political jealousy.[y] From this fatal moment the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the Duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to his own appanage of Burgundy, the county of Flanders as his maternal inheritance; and the people of Paris, who hated the Duke of Orleans, readily forgave, or rather exulted in his murder.[z]

It is easy to estimate the weakness of the government, from the terms upon which the Duke of Burgundy was permitted to obtain pardon at Chartres, a year after the perpetration of the crime. As soon as he entered the royal presence, everyone rose, except the king, queen, and dauphin. The duke, approaching the throne, fell on his knees; when a lord, who acted as a sort of counsel for him, addressed the king: "Sire, the Duke of Burgundy, your cousin and servant, is come before you, being informed that he has incurred your displeasure, on account of what he caused to be done to the Duke

[y] Orleans is said to have boasted of the Duchess of Burgundy's favors. Vill. t. xii. p. 474. Amelgard, who wrote about eighty years after the time, says, vim etiam inferre attentare præsumpsit. Notices des Manuscrits du Roi, t. i. p. 411.

[z] Michelet represents this young prince as regretted and beloved; but his language is full of those strange contrasts and inconsistencies which, for the sake of effect, this most brilliant writer sometimes employs. "Il avait, dans ses emportemens de jeunesse, terriblement vexé le peuple; il fut maudit du peuple, pleuré du peuple. Vivant, il coûta bien de larmes; mais combien plus, mort! Si vous eussiez demandé à la France si ce jeune homme était bien digne de tante d'amour, elle eût répondu, Je l'aimais. Ce n'est pas seulement pour le bien qu'on aime; qui aime, aime tout, les défauts aussi. Celui-ci plut comme il était, mêlé de bien et de mal. (Hist. de France, vi. 6.) What is the meaning of this love for one who, he has just told us, was cursed by the people? And if Paris was the representative of France, how did the people show their affection for the Duke of Orleans, when they were openly and vehemently the partisans of his murderer? On the first return of the Duke of Burgundy to Paris after the assassination, the citizens shouted "Noel," the usual cry on the entrance of the king, to the great displeasure of the queen and the princes. "Et pour vrai, comme dit est dessus, il estoit très fort aymé du commun peuple de Paris, et avoient grand espérance qu'iceluy duc eust très grand affection au royaume, et à la chose publicque, et avoient souvenance des grans tailles qui avoient esté mises sus depuis la mort du Duc Philippe de Bourgogne père d'iceluy, jusques à l'heure présente, lesquelles ils entendoient que feust par le moyen dudit Duc d'Orleans. Et pource estoit grandement encouru en l'indignation d'iceluy peuple, et leur sembloit que Dieu de sa grâce les avoit très-grandement pour récommandez, quand il avoit souffert qu'ils fussent hors de sa subjection et governement, et qu'ils en estoient delivrez." Monstrelet, 34. Compare this with what M. Michelet has written.

of Orleans your brother, for your good and that of your kingdom, as he is ready to prove when it shall please you to hear it, and therefore requests you, with all humility, to dismiss your resentment towards him, and to receive him into your favor." [a]

This insolent apology was all the atonement that could be extorted for the assassination of the first prince of the blood. It is not wonderful that the Duke of Burgundy soon obtained the management of affairs, and drove his adversaries from the capital. [A.D. 1410.] The princes, headed by the father-in-law of the young Duke of Orleans, the Count of Armagnac, from whom their party was now denominated, raised their standard against him; and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre. Several times peace was made; but each faction, conscious of their own insincerity, suspected that of their adversaries. The king, of whose name both availed themselves, was only in some doubtful intervals of reason capable of rendering legitimate the acts of either. The dauphin, aware of the tyranny which the two parties alternately exercised, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued. He gave peace to the Armagnacs at Auxerre, in despite of the Duke of Burgundy; and, having afterwards united with them against this prince, and carried a successful war into Flanders, he disappointed their revenge by concluding with him a treaty at Arras. [A.D. 1414.]

This dauphin and his next brother died within sixteen months of each other, by which the rank devolved upon Charles, youngest son of the king. The Count of Armagnac, now Constable of France, retained possession of the government. But his severity, and the weight of taxes, revived the Burgundian party in Paris, which a rigid proscription had endeavored to destroy. [April, 1417.] He brought on his head the implacable hatred of the queen, whom he had not only shut out from public affairs, but disgraced by the detection of her gallantries. Notwithstanding her ancient enmity to the Duke of Burgundy, she made overtures to him, and, being delivered by his troops from confinement, declared herself openly on his side. [A.D. 1417.] A few obscure persons stole the city

[a] Monstrelet, part i. f. 112.

keys, and admitted the Burgundians into Paris. The tumult which arose showed in a moment the disposition of the inhabitants; but this was more horribly displayed a few days afterwards, when the populace, rushing to the prisons, massacred the Constable d'Armagnac and his partisans. [June 12, 1418.] Between three and four thousand persons were murdered on this day, which has no parallel but what our own age has witnessed, in the massacre perpetrated by the same ferocious populace of Paris, under circumstances nearly similar. Not long afterwards an agreement took place between the Duke of Burgundy, who had now the king's person as well as the capital in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders. [A.D. 1419.] This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the Duke of Burgundy was assassinated at an interview with Charles, in his presence, and by the hands of his friends, though not, perhaps, with his previous knowledge.[b] From whomsoever the crime proceeded, it was a deed of infatuation, and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her.

It has been mentioned already that the English war had almost ceased during the reigns of Richard II. and Henry IV. The former of these was attached by inclination, and latterly by marriage, to the court of France; and, though the French government showed at first some disposition to revenge his dethronement, yet the new king's success, as well as domestic

[b] There are three suppositions conceivable to explain this important passage in history, the assassination of John Sanspeur. 1. It was pretended by the dauphin's friends at the time, and has been maintained more lately (St. Foix, Essais sur Paris, t. iii. p. 209, edit. 1767), that he had premeditated the murder of Charles, and that his own was an act of self-defence. This is, I think, quite improbable; the dauphin had a great army near the spot, while the duke was only attended by five hundred men. Villaret, indeed, and St. Foix, in order to throw suspicion upon the Duke of Burgundy's motives, assert that Henry V. accused him of having made proposals to him which he could not accept without offending God; and conjecture that this might mean the assassination of the dauphin. But the expressions of Henry do not relate to any private proposals of the duke, but to demands made by him and the queen, as proxies for Charles VI. in conference for peace, which he says he could not accept without offending God and contravening his own letters-patent. (Rymer, t. ix. p. 790.) It is not, however, very clear what this means. 2. The next hypothesis is, that it was the deliberate act of Charles. But his youth, his feebleness of spirit, and especially the consternation into which, by all testimonies he was thrown by the event, are rather adverse to this explanation. 3. It remains only to conclude that Tanegui de Chastel, and other favorites of the dauphin, long attached to the Orleans faction, who justly regarded the duke as an infamous assassin, and might question his sincerity or their own safety if he should regain the ascendant, took advantage of this opportunity to commit an act of retaliation, less criminal, but not less ruinous in its consequences, than that which had provoked it. Charles, however, by his subsequent conduct, recognized their deed, and naturally exposed himself to the resentment of the young Duke of Burgundy.

quarrels, deterred it from any serious renewal of the war. A long commercial connection had subsisted between England and Flanders, which the dukes of Burgundy, when they became sovereigns of the latter country upon the death of Count Louis in 1384, were studious to preserve by separate truces.[c] They acted upon the same pacific policy when their interest predominated in the councils of France. Henry had even a negotiation pending for the marriage of his eldest son with a princess of Burgundy,[d] when an unexpected proposal from the opposite side set more tempting views before his eyes. The Armagnacs, pressed hard by the Duke of Burgundy, offered, in consideration of only 4000 troops, the pay of which they would themselves defray, to assist him in the recovery of Guienne and Poitou. Four princes of the blood—Berry, Bourbon, Orleans, and Alençon—disgraced their names by signing this treaty.[e] [May, 1412.] Henry broke off his alliance with Burgundy, and sent a force into France, which found on its arrival that the princes had made a separate treaty, without the least concern for their English allies. After his death, Henry V. engaged for some time in a series of negotiations with the French court, where the Orleans party now prevailed, and with the Duke of Burgundy. He even secretly treated at the same time for a marriage with Catherine of France (which seems to have been his favorite, as it was ultimately his successful project), and with a daughter of the duke—a duplicity not creditable to his memory.[f] But Henry's ambition, which aimed at the highest quarry, was not long fettered by negotiation: and, indeed, his proposals of marrying Catherine were coupled with such exorbitant demands, as France, notwithstanding all her weakness, could not admit, though she would have ceded Guienne, and given a vast dowry with the princess.[g] He invaded Normandy, took Harfleur, and won the great battle of Azincourt on his march to Calais.[h] [A.D. 1415.]

c Rymer, t. viii. p. 511; Villaret, t. xii. p. 174.

d Idem, t. viii. p. 721.

e Idem, t. viii. p. 726, 737, 738.

f Rymer, t. ix. p. 136.

g The terms required by Henry's ambassadors in 1415 were the crown of France; or, at least, reserving Henry's rights to that, Normandy, Touraine, Maine, Guienne, with the homage of Brittany and Flanders. The French offered Guienne and Saintonge, and a dowry of 800,000 gold crowns for Catherine. The English demanded 2,000,000. Rym. t. ix. p. 218.

h The English army at Azincourt was probably of not more than 15,000 men; the French were at the least 50,000, and, by some computations, much more numerous. They lost 10,000 killed, of whom 9000 were knights or gentlemen. Almost as many were made prisoners. The English, according to Monstrelet, lost 1600 men; but their own historians reduce this to a very small number. It is curious that the Duke of Berry,

The flower of French chivalry was mowed down in this fatal day, but especially the chiefs of the Orleans party, and the princes of the royal blood, met with death or captivity. Burgundy had still suffered nothing; but a clandestine negotiation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till a year after the battle of Azincourt, when, by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be suspended till Henry should become master of a considerable part of the kingdom.*i* In a second invasion the English achieved the conquest of Normandy; and this, in all subsequent negotiations for peace during the life of Henry, he would never consent to relinquish. After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace of Bretigni;*j* and the treaty, though laboring under some difficulties, seems to have been nearly completed, when the Duke of Burgundy, for reasons unexplained, suddenly came to a reconciliation with the dauphin. This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been speedily followed by one still more surprising, the assassination of the Duke of Burgundy at Montereau. [Sept. 10, 1419.]

An act of treachery so apparently unprovoked inflamed the minds of that powerful party which had looked up to the duke as their leader and patron. The city of Paris, especially, abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown. A solemn oath was taken by all ranks to revenge the crime; the nobility, the clergy, the parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (*soi-disant*) dauphin. Philip, son of the assassinated duke, who, with all the popularity and much of the ability of his father, did not inherit all his depravity, was instigated by a pardonable excess of filial resentment to ally himself with the King of England. These passions of the people and the

who advised the French to avoid an action, had been in the battle of Poitiers fifty-nine years before. Vill. t. xiii. p. 355.

i Compare Rym. t. ix. pp. 34, 138, 304, 394. The last reference is to the treaty of Calais.

j Rym. t. ix. pp. 628, 763. Nothing can be more insolent than the tone of Henry's instructions to his commissioners, p. 628.

Duke of Burgundy, concurring with the imbecility of Charles VI. and the rancor of Isabel towards her son, led to the treaty of Troyes. [May, 1420.] This compact, signed by the queen and duke, as proxies of the king, who had fallen into a state of unconscious idiocy, stipulated that Henry V., upon his marriage with Catherine, should become immediately regent of France, and, after the death of Charles, succeed to the kingdom, in exclusion not only of the dauphin, but of all the royal family.[k] It is unnecessary to remark that these flagitious provisions were absolutely invalid. But they had at the time the strong sanction of force; and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France as his father's had been in England. What not even the comprehensive policy of Edward III., the energy of the Black Prince, the valor of their Knollyses and Chandoses, nor his own victories could attain, now seemed, by a strange vicissitude of fortune, to court his ambition. During two years that Henry lived after the treaty of Troyes, he governed the north of France with unlimited authority in the name of Charles VI. The latter survived his son-in-law but a few weeks; and the infant Henry VI. was immediately proclaimed King of France and England, under the regency of his uncle the Duke of Bedford.

Notwithstanding the disadvantage of a minority, the English cause was less weakened by the death of Henry than might have been expected. The Duke of Bedford partook of the same character, and resembled his brother in faults as well as virtues; in his haughtiness and arbitrary temper as in his energy and address. At the accession of Charles VII. the usurper was acknowledged by all the northern provinces of France, except a few fortresses, by most of Guienne, and the dominions of Burgundy. [A.D. 1423.] The Duke of Brittany soon afterwards acceded to the treaty of Troyes, but changed his party again several times within a few years. The central provinces, with Languedoc, Poitou, and Dauphiné, were faithful to the king. For some years the war continued without

k As if through shame on account of what was to follow, the first articles contain petty stipulations about the dower of Catherine. The sixth gives the kingdom of France after Charles's decease to Henry and his heirs. The seventh concedes the immediate regency. Henry kept Normandy by right of conquest, not in virtue of any stipulation in the treaty, which he was too proud to admit. The treaty of Troyes was confirmed by the States-General, or rather by a partial convention which assumed the name, in December, 1420. Rym. t. x. p. 30. The parliament of England did the same. Id. p. 110. It is printed at full length by Villaret, t xv. p. 84.

any decisive result; but the balance was clearly swayed in favor of England. For this it is not difficult to assign several causes. The animosity of the Parisians and the Duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpiably offended. The war had brought forward some accomplished commanders in the English army; surpassing, not indeed in valor and enterprise, but in military skill, any whom France could oppose to them. Of these the most distinguished, besides the Duke of Bedford himself, were Warwick, Salisbury, and Talbot. Their troops, too, were still very superior to the French. But this, we must in candor allow, proceeded in a great degree from the mode in which they were raised. The war was so popular in England that it was easy to pick the best and stoutest recruits,[l] and their high pay allured men of respectable condition to the service. We find in Rymer a contract of the Earl of Salisbury to supply a body of troops, receiving a shilling a day for every man-at-arms, and sixpence for each archer.[m] This is, perhaps, equal to fifteen times the sum at our present value of money. They were bound, indeed, to furnish their own equipments and horses. But France was totally exhausted by her civil and foreign war, and incompetent to defray the expenses even of the small force which defended the wreck of the monarchy. Charles VII. lived in the utmost poverty at Bourges.[n] The nobility had scarcely recovered from the fatal slaughter of Azincourt; and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field. It became almost entirely a war of partisans. Every town in Picardy, Champagne, Maine, or wherever the contest might be carried on, was a fortress; and in the attack or defence of these garrisons the valor of both nations was called into constant exercise. This mode of warfare was undoubtedly the best in the actual state of France, as it gradually improved her troops, and flushed them with petty successes. But what prin-

l Monstrelet, part i. f. 303.

m Rym. t. x. p. 392. This contract was for 600 men-at-arms, including six bannerets and thirty-four bachelors; and for 1700 archers; bien et suffisamment montez, armez, et arraiez comme a leurs estats appartient. The pay was, for the earl, 6*s.* 8*d.* a day; for a banneret, 4*s.*; for a bachelor, 2*s.*; for every other man-at-arms, 1*s.*; and for each archer, 6*d.* Artillery-men were paid higher than men-at-arms.

n Villaret, t. xiv. p. 302.

cipally led to its adoption, was the license and insubordination of the royalists, who, receiving no pay, owned no control, and thought that, provided they acted against the English and Burgundians, they were free to choose their own points of attack. Nothing can more evidently show the weakness of France than the high terms by which Charles VII. was content to purchase the assistance of some Scottish auxiliaries. The Earl of Buchan was made constable; the Earl of Douglas had the duchy of Touraine, with a new title, lieutenant-general of the kingdom. At a subsequent time Charles offered the province of Saintonge to James I. for an aid of 6000 men. These Scots fought bravely for France, though unsuccessfully, at Crevant and Verneuil; but it must be owned they set a sufficient value upon their service. Under all these disadvantages it would be unjust to charge the French nation with any inferiority of courage, even in the most unfortunate periods of this war. Though frequently panic-struck in the field of battle, they stood sieges of their walled towns with matchless spirit and endurance. Perhaps some analogy may be found between the character of the French commonalty during the English invasion and the Spaniards of the late peninsular war. But to the exertions of those brave nobles who restored the monarchy of Charles VII. Spain has afforded no adequate parallel.

It was, however, in the temper of Charles VII. that his enemies found their chief advantage. This prince is one of the few whose character has been improved by prosperity. During the calamitous morning of his reign he shrunk from fronting the storm, and strove to forget himself in pleasure. Though brave, he was never seen in war; though intelligent, he was governed by flatterers. Those who had committed the assassination at Montereau under his eyes were his first favorites; as if he had determined to avoid the only measure through which he could hope for better success, a reconciliation with the Duke of Burgundy. The Count de Richemont, brother of the Duke of Brittany, who became afterwards one of the chief pillars of his throne, consented to renounce the English alliance, and accept the rank of constable, on condition that these favorites should quit the court. [A.D. 1424.] Two others, who successively gained a similar influence over Charles, Richemont publicly caused to be assassinated, assuring the king that it was for his own and the public good. Such was the debasement

of morals and government which twenty years of civil war had produced! Another favorite, La Tremouille, took the dangerous office, and, as might be expected, employed his influence against Richemont, who for some years lived on his own domains, rather as an armed neutral than a friend, though he never lost his attachment to the royal cause.

It cannot therefore surprise us that with all these advantages the regent Duke of Bedford had almost completed the capture of the fortresses north of the Loire when he invested Orleans in 1428. If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy, and it is said that Charles VII. in despair was about to retire into Dauphiné. At this time his affairs were restored by one of the most marvellous revolutions in history. A country girl overthrew the power of England. We cannot pretend to explain the surprising story of the Maid of Orleans; for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her. Nor will this be solved by the hypothesis of a concerted stratagem; which, if we do not judge altogether from events, must appear liable to so many chances of failure, that it could not have suggested itself to any rational person. However, it is certain that the appearance of Joan of Arc turned the tide of war, which from that moment flowed without interruption in Charles's favor. A superstitious awe enfeebled the sinews of the English. They hung back in their own country, or deserted from the army, through fear of the incantations by which alone they conceived so extraordinary a person to succeed.*o* As men always make sure of Providence for an ally, whatever untoward fortune appeared to result from preternatural causes was at once ascribed to infernal enemies; and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine.*p*

o Rym. t. x. pp. 458-472. This, however, is conjecture; for the cause of their desertion is not mentioned in these proclamations, though Rymer has printed it in their title. But the Duke of Bedford speaks of the turn of success as astonishing, and due only to the superstitious fear which the English had conceived of a female magician. Rymer, t. x. p. 408.

p M. de l'Averdy, to whom we owe the copious account of the proceedings against Joan of Arc, as well as those which Charles VII. instituted in order to rescind the former, contained in the third volume of Notices des Manuscrits du Roi, has justly made this remark, which is founded on the eagerness shown by the University of Paris in the prosecution, and on its being conducted

The spirit which Joan of Arc had roused did not subside. France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune. The king, too, shook off his indolence,[q] and permitted Richemont to exclude his unworthy favorites from the court. This led to a very important consequence. The Duke of Burgundy, whose alliance with England had been only the fruit of indignation at his father's murder, fell naturally, as that passion wore out,

before an inquisitor; a circumstance exceedingly remarkable in the ecclesiastical history of France. But another material observation arises out of this. The Maid was pursued with peculiar bitterness by her countrymen of the English, or rather Burgundian, faction; a proof that in 1430 their animosity against Charles VII. was still ardent. [Note XVI.]

[q] It is a current piece of history that Agnes Sorel, mistress of Charles VII., had the merit of dissuading him from giving up the kingdom as lost at the time when Orleans was besieged in 1428. Mezeray, Daniel, Villaret, and, I believe, every other modern historian, have mentioned this circumstance; and some of them, among whom is Hume, with the addition that Agnes threatened to leave the court of Charles for that of Henry, affirming that she was born to be the mistress of a great king. The latter part of this tale is evidently a fabrication, Henry VI. being at the time a child of seven years old. But I have, to say the least, great doubts of the main story. It is not mentioned by contemporary writers. On the contrary, what they say of Agnes leads me to think the dates incompatible. Agnes died (in childbed, as some say) in 1450; twenty-two years after the siege of Orleans. Monstrelet says that she had been about five years in the service of the queen; and the king taking pleasure in her liveliness and wit, common fame had spread abroad that she lived in concubinage with him. She certainly had a child, and was willing that it should be thought the king's; but he always denied it, et le pouvoit bien avoir emprunté ailleurs. Pt. iii. f. 25. Olivier de la Marche, another contemporary, who lived in the court of Burgundy, says, about the year 1444, le roy avoir nouvellement eslevé une pauvre demoiselle, gentifemme, nommée Agnes Sorel, et mis en tel triumphe et tel pouvoir, que son estat estoit a comparar aux grandes princesses de royaume, et certes c'estoit une des plus belles femmes que je vey oncques, et fit en sa qualité beau-coup au royaume de France. Elle avançoit devers le roy jeunes gens d'armes et gentils compaignons, et dont le roy depuis fut bien servy. La Marche; Mém. Hist. t. viii. p. 145. Du Clercq, whose memoirs were first published in the same collection, says that Agnes mourut par poison moult jeune. Ib. t. viii. p. 410. And the continuator of Monstrelet, probably John Chartier, speaks of the youth and beauty of Agnes, which exceeded that of any other woman in France, and of the favor shown her by the king, which so much excited the displeasure of the dauphin, on his mother's account, and he was suspected of having caused her to be poisoned. fol. 68. The same writer affirms of Charles VII. that he was, before the peace of Arras, de moult belle vie et devote; but afterwards enlaidit sa vie de tenir malles femmes en son hostel, &c. fol. 86.

It is for the reader to judge how far these passages render it improbable that Agnes Sorel was the mistress of Charles VII. at the siege of Orleans in 1428, and, consequently, whether she is entitled to the praise which she has received, of being instrumental in the deliverance of France. The tradition, however, is as ancient as Francis I., who made in her honor a quatrain which is well known. This probably may have brought the story more into vogue, and led Mezeray, who was not very critical, to insert it in his history, from which it has passed to his followers. Its origin was apparently the popular character of Agnes. She was the Nell Gwyn of France; and justly beloved, not only for her charity and courtesy, but for bringing forward men of merit, and turning her influence, a virtue very rare in her class, towards the public interest. From thence it was natural to bestow upon her, in after-times, a merit not ill suited to her character, but which an accurate observation of dates seems to render impossible. But whatever honor I am compelled to detract from Agnes Sorel, I am willing to transfer undiminished to a more unblemished female, the injured queen of Charles VII., Mary of Anjou, who has hitherto only shared with the usurper of her rights the credit of awakening Charles from his lethargy. Though I do not know on what foundation even this rests, it is not unlikely to be true, and, in deference to the sex, let it pass undisputed.

Sismondi (vol. xiii. p. 204), where he first mentions Agnes Sorel, says that many of the circumstances told of her influence over Charles VII. are fabulous. "Cependant il faut bien qu'Agnès ait mérité, en quelque manière, la

into sentiments more congenial to his birth and interests. A prince of the house of Capet could not willingly see the inheritance of his ancestors transferred to a stranger. And he had met with provocation both from the regent and the Duke of Gloucester, who, in contempt of all policy and justice, had endeavored, by an invalid marriage with Jacqueline, Countess of Hainault and Holland, to obtain provinces which Burgundy designed for himself. Yet the union of his sister with Bedford, the obligations by which he was bound, and, most of all, the favor shown by Charles VII. to the assassins of his father, kept him for many years on the English side, although rendering it less and less assistance. But at length he concluded a treaty at Arras, the terms of which he dictated rather as a conqueror than a subject negotiating with his sovereign. [A.D. 1435.] Charles, however, refused nothing for such an end; and, in a very short time, the Burgundians were ranged with the French against their old allies of England.

It was now time for the latter to abandon those magnificent projects of conquering France which temporary circumstances alone had seemed to render feasible. But as it is a natural effect of good fortune in the game of war to render a people insensible to its gradual change, the English could not persuade themselves that their affairs were irretrievably declining. Hence they rejected the offer of Normandy and Guienne, subject to the feudal superiority of France, which was made to them at the congress of Arras;[r] and some years afterwards, when Paris, with the adjacent provinces, had been lost, the English ambassadors, though empowered by their private instructions to relax, stood upon demands quite disproportionate to the actual position of affairs.[s] As foreign enemies, they were

reconnoissance qui s'est attachée à son nom." This is a loose and inconclusive way of reasoning in history; many popular traditions have no basis at all. And in p. 345 he slights the story told in Brantôme to the honor of Agnes, as well he might, since it is ridiculously untrue that she threatened Charles to go to the court of Henry VI., knowing herself to be born to be the mistress of a great king. Sismondi afterwards (pp. 497 and 604) quotes, as I have done, Chartier and Jacques du Clercq; but without adverting to the incongruity of their dates with the current story. M. Michelet does not seem to attach much credit to it, though he adopts the earlier date for the king's attachment to Agnes.

[r] Villaret says, Les plénipotentiares de Charles offrirent la cession de la Normandie et de la Guienne *en toute proprieté sous la clause de l'hommage à la couronne*, t. xv. p. 174. But he does not quote his authority, and I do not like to rely on an historian not eminent for accuracy in fact or precision in language. If his expression is correct, the French must have given up the feudal appeal or *ressort* which had been the great point in dispute between Edward III. and Charles V., preserving only a homage *per paragium*, as it was called, which implied no actual supremacy. Monstrelet says only, que per certaines conditions luy seroient accordées les seign euries de Guienne et Normandie.

[s] See the instructions given to the English negotiators in 1439, at length, in Rymer, t. x. p. 724.

odious even in that part of France which had acknowledged Henry;[t] and when the Duke of Burgundy deserted their side, Paris and every other city were impatient to throw off the yoke. A feeble monarchy, and a selfish council, completed their ruin: the necessary subsidies were raised with difficulty, and, when raised, misapplied. It is a proof of the exhaustion of France, that Charles was unable, for several years, to reduce Normandy or Guienne, which were so ill-provided for defence.[u] At last he came with collected strength to the contest, and, breaking an armistice upon slight pretences, within two years overwhelmed the English garrisons in each of these provinces. All the inheritance of Henry II. and Eleanor, all the conquests of Edward III. and Henry V. except Calais and a small adjacent district, were irrecoverably torn from the crown of England. A barren title, that idle trophy of disappointed ambition, was preserved with strange obstinacy to our own age. [A.D. 1449.]

In these second English wars we find little left of that generous feeling which had, in general, distinguished the contemporaries of Edward III. The very virtues which a state of hostility promotes are not proof against its long continuance, and sink at last into brutal fierceness. Revenge and fear excited the two factions of Orleans and Burgundy to all atrocious actions. The troops serving under partisans on detached expeditions, according to the system of the war, lived at free quarters on the people. The histories of the time are full of their outrages, from which, as is the common case, the unprotected peasantry most suffered.[v] Even those laws of war, which the courteous sympathies of chivalry had enjoined, were

t Villaret, t. xiv. p. 448.

u Amelgard, from whose unpublished memoirs of Charles VII. and Louis XI. some valuable extracts are made in the Notices des Manuscrits, t. i. p. 403, attributes the delay in recovering Normandy solely to the king's slothfulness and sensuality. In fact the people of that province rose upon the English and almost emancipated themselves with little aid from Charles.

v Monstrelet, passim. A long metrical complaint of the people of France, curious as a specimen of versification, as well as a testimony to the misfortunes of the time, may be found in this historian, part i. fol. 321. Notwithstanding the treaty of Arras, the French and Burgundians made continual incursions upon each other's frontiers, especially about Laon and in the Vermandois. So that the people had no help, says Monstrelet, si non de crier miserablement a Dieu leur createur vengeance; et que pis estoit, quand ils obtenoient aucun sauf-conduit d'aucuns capitaines, peu en estoit entretenu, mesmement tout d'un parti. part ii. fol. 139. These pillagers were called Ecorcheurs, because they stripped the people of their shirts. And this name superseded that of Armagnacs, by which one side had hitherto been known. Even Xaintrailles and La Hire, two of the bravest champions of France, were disgraced by these habits of outrage. Ibid. fols. 144, 150, 175. Oliv. de la Marche, in Collec. des Mémoires, t. viii. p. 25; t. v. p. 323. Pour la plupart, says Villaret, se faire guerrier, ou voleur de grands chemins, signifioit la même chose.

disregarded by a merciless fury. Garrisons surrendering after a brave defence were put to death. Instances of this are very frequent. Henry V. excepts Alain Blanchard, a citizen who had distinguished himself during the siege, from the capitulation of Rouen, and orders him to execution. At the taking of a town of Champagne, John of Luxemburg, the Burgundian general, stipulates that every fourth and sixth man should be at his discretion; which he exercises by causing them all to be hanged.[w] Four hundred English from Pontoise, stormed by Charles VII. in 1441, are paraded in chains and naked through the streets of Paris, and thrown afterwards into the Seine. This infamous action cannot but be ascribed to the king.[x]

At the expulsion of the English, France emerged from the chaos with an altered character and new features of government. The royal authority and supreme jurisdiction of the parliament were universally recognized. Yet there was a tendency towards insubordination left among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration which, in the convulsive struggles of the war, had been suffered to prevail. In the south were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct. The dukes of Brittany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers than privileged subjects. The princes, too, of the royal blood, who, during the late reign, had learned to partake or contend for the management, were ill-inclined towards Charles VII., himself jealous, from old recollections, of their ascendency. They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded. This apprehension gave rise to several attempts at rebellion during the reign of Charles VII., and to the war, commonly entitled, for the

[w] Monstrelet, part ii. f. 79. This John of Luxemburg, Count de Ligny, was a distinguished captain on the Burgundian side, and for a long time would not acquiesce in the treaty of Arras. He disgraced himself by giving up to the Duke of Bedford his prisoner Joan of Arc for 10,000 francs. The famous Count of St. Pol was his nephew, and inherited his great possessions in the county of Vermandois. Monstrelet relates a singular proof of the good education which his uncle gave him. Some prisoners having been made in an engagement, si fut le jeune Comte de St. Pol mis en voye de guerre; car le Comte de Ligny son oncle luy en feit occire aucuns, le quel y prenoit grand plaisir, part ii. fol. 95.

[x] Villaret, t. xv. p. 327.

Public Weal (*du Bien Public*), under Louis XI. Among the pretences alleged by the revolters in each of these, the injuries of the people were not forgotten;[y] but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredation, the French had no inducement to intrust even their real grievances to a few malcontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favored Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians. Some of these had been led by the dauphin to a war in Germany, but the remainder still infested the highroads and villages. Charles established his companies of ordonnance, the basis of the French regular army, in order to protect the country from such depredators. They consisted of about nine thousand soldiers, all cavalry, of whom fifteen hundred were heavy armed; a force not very considerable, but the first, except mere body-guards, which had been raised in any part of Europe as a national standing army.[z] These troops were paid out of the produce of a permanent tax, called the taille; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made, except in Guienne, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavored to return to its protection.[a]

It was not long before the new despotism exhibited itself

[y] The confederacy formed at Nevers in 1441, by the dukes of Orleans and Bourbon, with many other princes, made a variety of demands, all relating to the grievances which different classes of the state, or individuals among themselves, suffered under the administration of Charles. These may be found at length in Monstrelet, pt. ii. f. 193; and are a curious document of the change which was then working in the French constitution. In his answer the king claims the right, in urgent cases, of levying taxes without waiting for the consent of the States-General.

[z] Olivier de la Marche speaks very much in favor of the companies of ordonnance, as having repressed the plunderers, and restored internal police. Collect. des Mémoires, t. viii. p. 148. Amelgard pronounces a vehement philippic against them; but it is probable that his observation of the abuses they had fallen into was confined to the reign of Louis XI. Notices des Manuscrits, ubi supra.

[a] The insurrection of Guienne in 1452, which for a few months restored that province to the English crown, is accounted for in the curious memoirs of Amelgard, above mentioned. It proceeded solely from the arbitrary taxes imposed by Charles VII. in order to defray the expenses of his regular army. The people of Bordeaux complained of exactions not only contrary to their ancient privileges, but to the positive conditions of their capitulation. But the king was deaf to such remonstrances. The province of Guienne, he says, then perceived that it was meant to subject it to the same servitude as the rest of France, where the leeches of the state boldly maintain as a fundamental maxim, that the king has a right to tax all his subjects how and when he pleases; which is to advance that in France no man has anything that he can call his own, and that the king can take all at his pleasure; the proper condition of slaves, whose peculium enjoyed by their master's permission belongs to

in its harshest character. Louis XI., son of Charles VII., who, during his father's reign, had been connected with the discontented princes, came to the throne greatly endowed with those virtues and vices which conspire to the success of a king. [A.D. 1461.] Laborious vigilance in business, contempt of pomp, affability to inferiors, were his excellences; qualities especially praiseworthy in an age characterized by idleness, love of pageantry, and insolence. To these virtues he added a perfect knowledge of all persons eminent for talents or influence in the countries with which he was connected, and a well-judged bounty, that thought no expense wasted to draw them into his service or interest. In the fifteenth century this political art had hardly been known, except perhaps in Italy; the princes of Europe had contended with each other by arms, sometimes by treachery, but never with such complicated subtlety of intrigue. Of that insidious cunning, which has since been brought to perfection, Louis XI. may be deemed not absolutely the inventor, but the most eminent improver; and its success has led, perhaps, to too high an estimate of his abilities. Like most bad men, he sometimes fell into his own snare, and was betrayed by his confidential ministers, because his confidence was generally reposed in the wicked. And his dissimulation was so notorious, his tyranny so oppressive, that he was naturally surrounded by enemies, and had occasion for all his craft to elude those rebellions and confederacies which might perhaps not have been raised against a more upright sovereign.*b* At one time the monarchy was on the point of sinking before a combination which would have ended in dismembering France. This was the league denominated of the Public Weal, in which all the princes and great vassals of the French

him, like their persons, and may be taken away whenever he chooses. Thus situated, the people of Guienne, especially those of Bordeaux, alarmed themselves, and, excited by some of the nobility, secretly sought about for means to regain their ancient freedom; and having still many connections with persons of rank in England, they negotiated with them, &c. Notices des Manuscrits, p. 433. The same cause is assigned to this revolution by Du Clercq, also a contemporary writer, living in the dominions of Burgundy. Collection des Mémoires, t. ix. p. 400. Villaret has not known, or not chosen to know, anything of the matter.

b Sismondi (vol. xiv. p. 312) and Michelet (vol. ix. p. 347) agree in thinking Louis XI. no worse than other kings of his age; in fact, the former seems rarely to make a distinction between one king and another. Louis was just and even attentive towards the lower people, and spared the blood of his soldiers. But he had imbibed a notion that treachery and cruelty could not be carried too far against his enemies, and especially against his rebellious subjects. Louis composed for his son's use, or caused to be composed a political treatise entitled 'Le Rosier des Guerres,' which has never been published. It is written in a spirit of public morality very unlike his practice. (Sismondi, vol. xiv. p. 616.) Thus two royal Anti-Machiavels have satirized themselves.

crown were concerned; the dukes of Brittany, Burgundy, Alençon, Bourbon, the Count of Dunois, so renowned for his valor in the English wars, the families of Foix and Armagnac; and at the head of all, Charles Duke of Berry, the king's brother and presumptive heir. [A.D. 1461.] So unanimous a combination was not formed without a strong provocation from the king, or at least without weighty grounds for distrusting his intentions; but the more remote cause of this confederacy, as of those which had been raised against Charles VII., was the critical position of the feudal aristocracy from the increasing power of the crown. This war of the Public Weal was in fact, a struggle to preserve their independence; and from the weak character of the Duke of Berry, whom they would, if successful, have placed upon the throne, it is possible that France might have been in a manner partitioned among them in the event of their success, or, at least, that Burgundy and Brittany would have thrown off the sovereignty that galled them.[c]

The strength of the confederates in this war much exceeded that of the king; but it was not judiciously employed; and after an indecisive battle at Montlhéry they failed in the great object of reducing Paris, which would have obliged Louis to fly from his dominions. It was his policy to promise everything, in trust that fortune would afford some opening to repair his losses and give scope to his superior prudence. Accordingly, by the treaty of Conflans, he not only surrendered afresh the towns upon the Somme, which he had lately redeemed from the Duke of Burgundy, but invested his brother with the duchy of Normandy as his appanage.

The term appanage denotes the provision made for the younger children of a king of France. This always consisted of lands and feudal superiorities held of the crown by the tenure of peerage. It is evident that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage coeval with the monarchy was not to be abrogated, and the scarcity of money ren-

[c] Sismondi has a just observation on the League of the Public Weal. "Le nom seul du Bien Public, qui fut donné à cette ligue, était un hommage au progrès des lumières: c'était la profession d'un principe qui n'avait point encore été proclamé; c'est que le bien public doit être le but du gouvernement; mais les princes qui s'associaient pour l'obtenir étaient encore bien peu en etat de connaitre sa nature" (xiv. 161).

dered it impossible to provide for the younger branches of the royal family by any other means. It was restrained, however, as far as circumstances would permit. Philip IV. declared that the county of Poitiers, bestowed by him on his son, should revert to the crown on the extinction of male heirs. But this, though an important precedent, was not, as has often been asserted, a general law. Charles V. limited the appanages of his own sons to twelve thousand livres of annual value in land. By means of their appanages, and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people.

No appanage had ever been granted to France so enormous as the duchy of Normandy. One-third of the whole national revenue, it is declared, was derived from that rich province. Louis could not, therefore, sit down under such terms as, with his usual insincerity, he had accepted at Conflans. In a very short time he attacked Normandy, and easily compelled his brother to take refuge in Brittany; nor were his enemies ever able to procure the restitution of Charles's appanage. During the rest of his reign Louis had powerful coalitions to withstand; but his prudence and compliance with circumstances, joined to some mixture of good fortune, brought him safely through his perils. The Duke of Brittany, a prince of moderate talents, was unable to make any formidable impression, though generally leagued with the enemies of the king. The less powerful vassals were successfully crushed by Louis with decisive vigor; the duchy of Alençon was confiscated; the Count of Armagnac was assassinated; the Duke of Nemours, and the Constable of St. Pol, a politician as treacherous as Louis, who had long betrayed both him and the Duke of Burgundy, suffered upon the scaffold. The king's brother Charles, after disquieting him for many years, died suddenly in Guienne, which had finally been granted as his appanage, with strong suspicions of having been poisoned by the king's contrivance.[d] [A.D. 1472.] Edward IV. of England was too dissipated and

[d] Sismondi, however, and Michelet do not believe that the Duke of Guienne was poisoned by his brother; he had been ill for several months.

too indolent to be fond of war; and, though he once entered France with an army more considerable than could have been expected after such civil bloodshed as England had witnessed, he was induced, by the stipulation of a large pension, to give up the enterprise.*e* So terrible was still in France the apprehension of an English war, that Louis prided himself upon no part of his policy so much as the warding this blow. Edward showed a desire to visit Paris; but the king gave him no invitation, lest, he said, his brother should find some handsome women there, who might tempt him to return in a different manner. Hastings, Howard, and others of Edward's ministers, were secured by bribes in the interest of Louis, which the first of these did not scruple to receive at the same time from the Duke of Burgundy.*f*

This was the most powerful enemy whom the craft of Louis had to counteract. In the last days of the feudal system, when the house of Capet had almost achieved the subjugation of those proud vassals among whom it had been originally numbered, a new antagonist sprung up to dispute the field against the crown. John King of France granted the duchy of Burgundy, by way of appanage, to his third son, Philip. By his marriage with Margaret, heiress of Louis Count of Flanders, Philip acquired that province, Artois, the county of Burgundy (or Franche-Comté), and the Nivernois. Philip the Good, his grandson, who carried the prosperity of this family to its height, possessed himself, by various titles, of the several other provinces which composed the Netherlands. These were fiefs of the empire, but latterly not much dependent upon it, and alienated by their owners without its consent. At the peace of Arras the districts of Macon and Auxerre were absolutely ceded to Philip, and great part of Picardy conditionally made over to him, redeemable on the payment of four hundred thousand crowns.*g* These extensive, though not compact domin-

e The army of Edward consisted of 1,500 men at arms and 14,000 archers; the whole very well appointed. Comines, t. xi. p. 238. There seems to have been a great expectation of what the English would do, and great fears entertained by Louis, who grudged no expense to get rid of them.

f Comines, t. vi. c. 2. Hastings had the mean cunning to refuse to give his receipt for the pension he took from Louis XI. "This present, he said to the king's agent, comes from your master's good pleasure, and not at my request; and if you mean I should receive it, you may put it here into my sleeve, but you shall have no discharge from me; for I will not have it said that the Great Chamberlain of England is a pensioner of the King of France, nor have my name appear in the books of the Chambres des Comptes." Ibid.

g The Duke of Burgundy was personally excused from all homage and service to Charles VII.; but, if either died, it was to be paid by the heir, or to the heir. Accordingly, on Charles's death Philip did homage to Louis. This ex-

ions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government, raised the subjects of Burgundy to a degree of prosperity quite unparalleled in these times of disorder, and this was displayed in general sumptuousness of dress and feasting. The court of Philip and of his son Charles was distinguished for its pomp and riches, for pageants and tournaments; the trappings of chivalry, perhaps without its spirit; for the military character of Burgundy had been impaired by long tranquillity.*h*

During the lives of Philip and Charles VII. each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous: Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the Duke of Guienne, brother of Louis, was what the malcontent French princes most desired and the king most dreaded; but Charles, either averse to any French connection, or willing to keep his daughter's suitors in dependence, would never directly accede to that or any other proposition for her marriage. On Philip's death in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one-half of Europe have contented him. It was his intention to assume the title

emption can hardly, therefore, have been inserted to gratify the pride of Philip, as historians suppose. Is it not probable that, during his resentment against Charles, he might have made some vow never to do him homage; which this reservation in the treaty was intended to preserve?

It is remarkable that Villaret says the Duke of Burgundy was positively excused by the 25th article of the peace of Arras from doing homage to Charles, or his successors kings of France, t. xvi. p. 404. For this assertion too he seems to quote the Trésor des Chartes, where, probably, the original treaty is preserved. Nevertheless, it appears otherwise, as published by Monstrelet at full length, who could have no motive to falsify it; and Philip's conduct in doing homage to Louis is hardly compatible with Villaret's assertion. Daniel copies Monstrelet without any observation. In the same treaty Philip is entitled duke by the grace of God; which was reckoned a mark of independence, and not usually permitted to a vassal.

h P. de Comines, l. i. c. 2 and 3; l. v. c. 9. Du Clercq, in Collection des Mémoires, t. ix. p. 389. In the investiture granted by John to the first Philip of Burgundy, a reservation is made that the royal taxes shall be levied throughout that appanage. But during the long hostility between the kingdom and duchy this could not have been enforced: and by the treaty of Arras Charles surrendered all right to tax the duke's dominions. Monstrelet, f. 114.

of king; and the Emperor Frederic III. was at one time actually on his road to confer this dignity, when some suspicion caused him to retire, and the project was never renewed.[i] It is evident that, if Charles's capacity had borne any proportion to his pride and courage, or if a prince less politic than Louis XI. had been his contemporary in France, the province of Burgundy must have been lost to the monarchy. For several years these great rivals were engaged, sometimes in open hostility, sometimes in endeavors to overreach each other; but Charles, though not much more scrupulous, was far less an adept in these mysteries of politics than the king.

Notwithstanding the power of Burgundy, there were some disadvantages in its situation. It presented (I speak of all Charles's dominions under the common name, Burgundy) a very exposed frontier on the side of Germany and Switzerland, as well as France; and Louis exerted a considerable influence over the adjacent princes of the empire as well as the United Cantons. The people of Liege, a very populous city, had for a long time been continually rebelling against their bishops, who were the allies of Burgundy; Louis was of course not backward to foment their insurrections, which sometimes gave the dukes a good deal of trouble. The Flemings, and especially the people of Ghent, had been during a century noted for their republican spirit and contumacious defiance of their sovereign. Liberty never wore a more unamiable countenance than among these burghers, who abused the strength she gave them by cruelty and insolence. Ghent, when Froissart wrote, about the year 1400, was one of the strongest cities in Europe, and would have required, he says, an army of two hundred thousand men to besiege it on every side, so as to shut up all access by the Lys and Scheldt. It contained eighty thousand men of age to bear arms;[j] a calculation which, although, as I presume, much exaggerated, is evidence of great actual pop-

[i] Garnier, t. xviii. p. 62. It is observable that Comines says not a word of this; for which Garnier seems to quote Belcarius, a writer of the sixteenth age. But even Philip, when Morvilliers, Louis's chancellor, used menaces towards him, interrupted the orator with these words: Je veux que chacun seache que, si j'eusse voulu, je fusse roi. Villaret, t. xvii. p. 44.

Charles had a vague notion of history, and confounded the province or duchy of Burgundy, which had always appertained to the French crown, with Franche-Comté and other countries which had belonged to the kingdom of Burgundy. Hence he talked at Dijon, in 1473, to the estates of the former, about the kingdom of Burgundy, "que ceux de France ont longtems usurpé et d'icelui fait duché; que tous les sujets doivent bien avoir à regret, et dit qu'il avait en soi des choses qu'il n'appartenait de savoir à nul qu'à lui." Michelet (ix. 162) is the first who has published this.

[j] Froissart, part ii. c. 67.

ulousness. Such a city was absolutely impregnable at a time when artillery was very imperfect both in its construction and management. Hence, though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters, who knew the danger of forcing them to a desperate defence.

No taxes were raised in Flanders, or indeed throughout the dominions of Burgundy, without consent of the three estates. In the time of Philip not a great deal of money was levied upon the people; but Charles obtained every year a pretty large subsidy, which he expended in the hire of Italian and English mercenaries.[k] An almost uninterrupted success had attended his enterprises for a length of time, and rendered his disposition still more overweening. His first failure was before Neuss, a little town near Cologne, the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace. [A.D. 1474.] Though compelled to raise the siege, he succeeded in occupying, next year, the duchy of Lorraine. But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest. The Swiss had given him some slight provocation, for which they were ready to atone; but Charles was unused to forbear; and perhaps Switzerland came within his projects of conquest. At Granson, in the Pays de Vaud, he was entirely routed, with more disgrace than slaughter.[l] [A.D. 1476.] But having reassembled his troops, and met the confederate army

[k] Comines, l. iv. c. 13. It was very reluctantly that the Flemings granted any money. Philip once begged for a tax on salt, promising never to ask anything more; but the people of Ghent, and, in imitation of them, the whole country, refused it. Du Clercq, p. 389. Upon his pretence of taking the cross, they granted him a subsidy, though less than he had requested, on condition that it should not be levied if the crusade did not take place, which put an end to the attempt. The states knew well that the duke would employ any money they gave him in keeping up a body of gens-d'armes, like his neighbor, the King of France; and though the want of such a force exposed their country to pillage, they were too good patriots to place the means of enslaving it in the hands of their sovereign. Grand doute faisoient les sujets, et pour plusieurs raisons, de se mettre en cette sujetion où ils voyoient le royaume de France, à cause de ses gens d'armes. A la vérité, leur grand doute n'estoit pas sans cause; car quand il se trouva cinq cens hommes d'armes, la volonté luy vint d'en avoir plus, et de plus hardiment entreprendre contre tous ses voisins. Comines, l. iii. c. 4, 9.

Du Clercq, a contemporary writer of very good authority, mentioning the story of a certain widow who had remarried the day after her husband's death, says that she was in some degree excusable, because it was the practice of the duke and his officers to force rich widows into marrying their soldiers or other servants. t. ix. p. 418.

[l] A famous diamond, belonging to Charles of Burgundy, was taken in the plunder of his tent by the Swiss at Granson. After several changes of owners, most of whom were ignorant of its value, it became the first jewel in the French crown. Garnier, t. xviii. p. 361.

of Swiss and Germans at Morat, near Friburg, he was again defeated with vast loss. On this day the power of Burgundy was dissipated: deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the Duke of Lorraine with a small dispirited army, and perished in the engagement. [A.D. 1477.]

Now was the moment when Louis, who had held back while his enemy was breaking his force against the rocks of Switzerland, came to gather a harvest which his labor had not reaped. Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France, but whose right of succession to the duchy of Burgundy was more questionable. Originally the great fiefs of the crown descended to females, and this was the case with respect to the two first mentioned. But John had granted Burgundy to his son Philip by way of appanage; and it was contended that the appanages reverted to the crown in default of male heirs. In the form of Philip's investiture, the duchy was granted to him and his lawful heirs, without designation of sex. The construction, therefore, must be left to the established course of law. This, however, was by no means acknowledged by Mary, Charles's daughter, who maintained both that no general law restricted appanages to male heirs, and that Burgundy had always been considered as a feminine fief, John himself having possessed it, not by reversion as king (for descendants of the first dukes were then living), but by inheritance derived through females.[m] Such was this question of succession between Louis XI. and Mary of Burgundy, upon the merits of whose pretensions I will not pretend altogether to decide, but shall only observe that, if Charles had conceived his daughter to be excluded from this part of his inheritance, he would probably, at Conflans or Peronne, where he treated upon the vantage-ground, have attempted at least to obtain a renunciation of Louis's claim.

[m] It is advanced with too much confidence by several French historians, either that the ordinances of Philip IV. and Charles V. constituted a general law against the descent of appanages to female heirs, or that this was a fundamental law of the monarchy. Du Clos, Hist. de Louis XI. t. ii. p. 252. Garnier, Hist. de France, t. xviii. p. 258. The latter position is refuted by frequent instances of female succession; thus Artois had passed, by a daughter of Louis le Male, into the house of Burgundy. As to the above-mentioned ordinances, the first applies only to the county of Poitiers; the second does not contain a syllable that relates to succession. (Ordonnances des Rois, t. vi. p. 54.) The doctrine of excluding female heirs was more consonant to the pretended Salic Law, and the recent principles as to inalienability of domain than to the analogy of feudal rules and precedents. M. Gaillard, in his Observations sur l'Histoire de Velly, Villaret, et Garnier, has a judicious note on this subject, t. iii. p. 304.

There was one obvious mode of preventing all further contest and of aggrandizing the French monarchy far more than by the reunion of Burgundy. This was the marriage of Mary with the dauphin, which was ardently wished in France. Whatever obstacles might occur to this connection, it was natural to expect on the opposite side—from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain of being incorporated with a country worse governed than their own. The arts of Louis would have been well employed in smoothing these impediments.[n] But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young duchess of Artois and Franche-Comté. Expectations of the marriage he sometimes held out, but, as it seems, without sincerity. Indeed he contrived irreconcilably to alienate Mary by a shameful perfidy, betraying the ministers whom she had intrusted upon a secret mission to the people of Ghent, who put them to the torture, and afterwards to death, in the presence and amidst the tears and supplications of their mistress. Thus the French alliance becoming odious in France, this princess married Maximilian of Austria, son of the Emperor Frederic—a connection which Louis strove to prevent, though it was impossible then to foresee that it was ordained to retard the growth of France and to bias the fate of Europe during three hundred years. [A.D. 1477.] This war lasted till after the death of Mary, who left one son, Philip, and one daughter, Margaret. By a treaty of peace concluded at Arras, in 1482, it was agreed that this daughter should become the dauphin's wife, with Franche-Comté and Artois, which Louis held already, for her dowry, to be restored in case the marriage should not take effect. The homage of Flanders was reserved to the crown.

Meanwhile Louis was lingering in disease and torments of mind, the retribution of fraud and tyranny. Two years before his death he was struck with an apoplexy, from which he never

n Robertson, as well as some other moderns, have maintained, on the authority of Comines, that Louis XI. ought in policy to have married the young princess to the Count of Angoulême, father of Francis I., a connection which she would not have disliked. But certainly nothing could have been more adverse to the interests of the French monarchy than such a marriage, which would have put a new house of Burgundy at the head of those princes whose confederacies had so often endangered the crown. Comines is one of the most judicious of historians; but his sincerity may be rather doubtful in the opinion above mentioned; for he wrote in the reign of Charles VIII., when the Count of Angoulême was engaged in the same faction as himself.

wholly recovered. As he felt his disorder increasing, he shut himself up in a palace near Tours, to hide from the world the knowledge of his decline.*o* His solitude was like that of Tiberius at Capreæ, full of terror and suspicion, and deep consciousness of universal hatred. All ranks, he well knew, had their several injuries to remember: the clergy, whose liberties he had sacrificed to the see of Rome, by revoking the Pragmatic Sanction of Charles VII.; the princes, whose blood he had poured upon the scaffold; the parliament, whose course of justice he had turned aside; the commons, who groaned under his extortion, and were plundered by his soldiery.*p* The palace, fenced with portcullises and spikes of iron, was guarded by archers and cross-bow men, who shot at any that approached by night. Few entered this den; but to them he showed himself in magnificent apparel, contrary to his former custom, hoping thus to disguise the change of his meagre body. He distrusted his friends and kindred, his daughter and his son, the last of whom he had not suffered even to read or write, lest he should too soon become his rival. No man ever so much feared death, to avert which he stooped to every meanness and sought every remedy. His physician had sworn that if he were dismissed the king would not survive a week; and Louis, enfeebled by sickness and terror, bore the rudest usage from this man, and endeavored to secure his services by vast rewards. Always credulous in relics, though seldom restrained by superstition from any crime,*q* he eagerly bought up treasures of this sort, and even procured a Calabrian hermit, of noted sanctity, to journey as far as Tours in order to restore his health. Philip de Comines, who attended him during his infirmity, draws a parallel between the torments he

o For Louis's illness and death see Comines, l. vi. c. 7-12, and Garnier, t. xix. p. 112, &c. Plessis, his last residence, about an English mile from Tours, is now a dilapidated farm-house, and can never have been a very large building. The vestiges of royalty about it are few; but the principal apartments have been destroyed, either in the course of ages or at the revolution.

p See a remarkable chapter in Philip de Comines, l. iv. c. 19, wherein he tells us that Charles VII. had never raised more than 1,800,000 francs a year in taxes; but Louis XI., at the time of his death, raised 4,700,000, exclusive of some military impositions; et surement c'estoit compassion de voir et scavoir la pauvreté du peuple. In this chapter he declares his opinion that no king can justly levy money on his subjects without their consent, and repels all common arguments to the contrary.

q An exception to this was when he swore by the cross of St. Lo, after which he feared to violate his oath. The Constable of St. Pol, whom Louis invited with many assurances to court, bethought himself of requiring this oath before he trusted his promises, which the king refused; and St. Pol prudently stayed away. Garn. t. xviii. p. 72. Some report that he had a similar respect for a leaden image of the Virgin, which he wore in his hat; as alluded to by Pope:

"A perjured prince a leaden saint revere."

then endured and those he had formerly inflicted on others. Indeed the whole of his life was vexation of spirit. "I have known him," says Comines, "and been his servant in the flower of his age, and in the time of his greatest prosperity; but never did I see him without uneasiness and care. Of all amusements he loved only the chase, and hawking in its season. And in this he had almost as much uneasiness as pleasure: for he rode hard and got up early, and sometimes went a great way, and regarded no weather; so that he used to return very weary, and almost ever in wrath with someone. I think that from his childhood he never had any respite of labor and trouble to his death. And I am certain that, if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very few; and at least that they would be twenty of sorrow for every one of pleasure." [r]

Charles VIII. was about thirteen years old when he succeeded his father Louis. [A.D. 1483.] Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion, and at least Charles was a minor by nature, if not by law. A contest arose, therefore, for the regency, which Louis had intrusted to his daughter Anne, wife of the Lord de Beaujeu, one of the Bourbon family. The Duke of Orleans, afterward Louis XII., claimed it as presumptive heir of the crown, and was seconded by most of the princes. Anne, however, maintained her ground, and ruled France for several years in her brother's name with singular spirit and address, in spite of the rebellions which the Orleans party raised up against her. These were supported by the Duke of Brittany, the last of the great vassals of the crown, whose daughter, as he had no male issue, was the object of as many suitors as Mary of Burgundy.

The duchy of Brittany was peculiarly circumstanced. The inhabitants, whether sprung from the ancient republicans of Armorica, or, as some have thought, from an emigration of Britons during the Saxon invasion, had not originally belonged to the body of the French monarchy. They were governed by their own princes and laws, though tributary, perhaps, as the weaker to the stronger, to the Merovingian kings.[s] In

[r] Comines, l. vi. c. 13.

[s] Gregory of Tours says that the Bretons were subject to France from the death of Clovis, and that their chiefs were styled counts, not kings, l. iv. c. 4. Charlemagne subdued the whole of

the ninth century the dukes of Brittany did homage to Charles the Bald, the right of which was transferred afterward to the dukes of Normandy. This formality, at that time no token of real subjection, led to consequences beyond the views of either party. For when the feudal chains that had hung so loosely upon the shoulders of the great vassals began to be straightened by the dexterity of the court, Brittany found itself drawn among the rest to the same centre. The old privileges of independence were treated as usurpation; the dukes were menaced with confiscation of their fief, their right of coining money disputed, their jurisdiction impaired by appeals to the parliament of Paris. However, they stood boldly upon their right, and always refused to pay liege-homage, which implied an obligation of service to the lord, in contradistinction to simple homage, which was a mere symbol of feudal dependence.†

About the time that Edward III. made pretension to the crown of France, a controversy somewhat resembling it arose in the duchy of Brittany, between the families of Blois and Montfort. This led to a long and obstinate war, connected all along, as a sort of underplot, with the great drama of France and England. At last Montfort, Edward's ally, by the defeat and death of his antagonist, obtained the duchy, of which Charles V. soon after gave him the investiture. This prince and his family were generally inclined to English connections; but the Bretons would seldom permit them to be effectual. Two cardinal feelings guided the conduct of this brave and faithful people; the one, an attachment to the French nation and monarchy in opposition to foreign enemies; the other, a zeal for their own privileges and the family of Montfort, in opposition to the encroachments of the crown. In Francis II., the present duke, the male line of that family was about to be extinguished. His daughter Anne was naturally the object of many suitors, among whom were partic-

Brittany. Yet it seems clear from Nigellus, author of a metrical Life of Louis the Debonair, that they were again almost independent. There was even a march of the Britannic frontier, which separated it from France. In the ensuing reign of Charles the Bald, Hincmar tells us, regnum undique a Paganis, et falsis Christianis, scilicet Britonibus circumscriptum est. Epist. c. 8. See, too, Capitularia Car. Calvi, A.D. 877, tit. 23. At this time a certain Nomenoe had assumed the crown of Brittany, and some others in succession bore the name of king. They seem, however, to have been feudally subject to France. Charles the Simple ceded to the Normans whatever right he possessed over Brittany; and the dukes of that country (the name of king was now dropped) always did homage to Normandy. See Daru, Hist. de Bretagne.

† Villaret, t. xii. p. 82; t. xv. p. 19.

ularly distinguished the Duke of Orleans, who seems to have been preferred by herself; the lord of Albret, a member of the Gascon family of Foix, favored by the Breton nobility, as most likely to preserve the peace and liberties of their country, but whose age rendered him not very acceptable to a youthful princess; and Maximilian, king of the Romans. Brittany was rent by factions and overrun by the armies of the regent of France, who did not lose this opportunity of interfering with its domestic troubles, and of persecuting her private enemy, the Duke of Orleans. Anne of Brittany, upon her father's death, finding no other means of escaping the addresses of Albret, was married by proxy to Maximilian. [A.D. 1489.] This, however, aggravated the evils of the country, since France was resolved at all events to break off so dangerous a connection. And as Maximilian himself was unable, or took not sufficient pains, to relieve his betrothed wife from her embarrassments, she was ultimately compelled to accept the hand of Charles VIII.[u] He had long been engaged by the treaty of Arras to marry the daughter of Maximilian, and that princess was educated at the French court. But this engagement had not prevented several years of hostilities, and continual intrigues with the towns of Flanders against Maximilian. The double injury which the latter sustained in the marriage of Charles with the heiress of Brittany seemed likely to excite a protracted contest; but the King of France, who had other objects in view, and perhaps was conscious that he had not acted a fair part, soon came to an accommodation, by which he restored Artois and Franche-Comté. Both these provinces had revolted to Maximilian; so that Charles must have continued the war at some disadvantage.[v]

France was now consolidated into a great kingdom: the feudal system was at an end. [A.D. 1492.] The vigor of Philip Augustus, the paternal wisdom of St. Louis, the policy of Philip the Fair, had laid the foundations of a powerful monarchy, which neither the arms of England nor seditions of Paris nor rebellions of the princes were able to shake. Besides the original fiefs of the French crown, it had acquired two countries beyond the Rhone, which properly depended

[u] This is one of the coolest violations of ecclesiastical law in comparatively modern times. Both contracts, especially that of Anne, were obligatory, so far at least that they could not be dissolved without papal dispensation. This was obtained; but it bears date eight days after the ceremony between Charles and Anne. (Sismondi, xv. 106.)

[v] Sismondi, xv. 135.

only upon the empire, Dauphiné, under Philip of Valois, by the bequest of Humbert, the last of its princes; and Provence, under Louis XI., by that of Charles of Anjou.[w] Thus having conquered herself, if I may use the phrase, and no longer apprehensive of any foreign enemy, France was prepared, under a monarch flushed with sanguine ambition, to carry her arms into other countries, and to contest the prize of glory and power upon the ample theatre of Europe.[x]

[w] The country now called Dauphiné formed part of the kingdom of Arles or Provence, bequeathed by Rodolph III. to the Emperor Conrad II. But the dominion of the empire over these new acquisitions being little more than nominal, a few of the chief nobility converted their respective fiefs into independent principalities. One of these was the Lord or Dauphin of Vienne, whose family became ultimately masters of the whole province. Humbert, the last of these, made John, son of Philip of Valois, his heir, on condition that Dauphiné should be constantly preserved as a separate possession, not incorporated with the kingdom of France. This bequest was confirmed by the Emperor Charles IV., whose supremacy over the province was thus recognized by the kings of France, though it soon came to be altogether disregarded. Sismondi (xiv. 3) dates the reunion of Dauphiné to the crown from 1457, before which time it was governed by the dauphin for the time being as a foreign sovereignty.

Provence, like Dauphiné, was changed from a feudal dependency to a sovereignty, in the weakness and dissolution of the kingdom of Arles, about the early part of the eleventh century. By the marriage of Douce, heiress of the first line of sovereign counts, with Raymond Berenger, Count of Barcelona, in 1112, it passed into that distinguished family. In 1167 it was occupied or usurped by Alfonso II., King of Aragon, a relation, but not heir, of the house of Berenger. Alfonso bequeathed Provence to his second son, of the same name, from whom it descended to Raymond Berenger IV. This count dying without male issue in 1245, his youngest daughter Beatrice took possession by virtue of her father's testament. But this succession being disputed by other claimants, and especially by Louis IX., who had married her eldest sister, she compromised differences by marrying Charles of Anjou, the king's brother. The family of Anjou reigned in Provence, as well as in Naples, till the death of Joan in 1382, who, having no children, adopted Louis, Duke of Anjou, brother of Charles V., as her successor. This second Angevine line ended in 1481 by the death of Charles III.; though Regnier, Duke of Lorraine, who was descended through a female, had a claim which it does not seem easy to repel by argument. It was very easy, however, for Louis XI., to whom Charles III. had bequeathed his rights, to repel it by force, and accordingly he took possession of Provence, which was permanently united to the Crown by letters-patent of Charles VIII. in 1486. Art de vérifier les Dates, t. ii. p. 445. Garnier, t. xix. p. 57, 474.

[x] The principal authority, exclusive of original writers, on which I have relied for this chapter is the History of France, by Velly, Villaret, and Garnier; a work which, notwithstanding several defects, has absolutely superseded those of Mezeray and Daniel. The part of the Abbé Velly comes down to the middle of the eighth volume (12mo edition), and of the reign of Philip de Valois. His continuator, Villaret, was interrupted by death in the seventeenth volume, and in the reign of Louis XI. In my references to this history, which for common facts I have not thought it necessary to make, I have merely named the author of the particular volume which I quote. This has made the above explanation convenient, as the reader might imagine that I referred to three distinct works. Of these three historians, Garnier, the last, is the most judicious and, I believe, the most accurate. His prolixity, though a material defect, and one which has occasioned the work itself to become an immeasurable undertaking, which could never be completed on the same scale, is chiefly occasioned by too great a regard to details, and is more tolerable than a similar fault in Villaret, proceeding from a love of idle declamation and sentiment. Villaret, however, is not without merits. He embraces, perhaps more fully than his predecessor Velly, those collateral branches of history which an enlightened reader requires almost in preference to civil transactions, the laws, manners, literature, and in general the whole domestic records of a nation. These subjects are not always well treated; but the book itself, to which there is a remarkably full index, forms, upon the whole, a great repository of useful knowledge. Villaret had the advantage of official access to the French archives, by which he has no doubt enriched his history; but his references are indistinct, and his composition breathes an air of rapidity and want of exactness. Velly's

NOTES TO BOOK I.

Note I.

The evidence of Zosimus, which is the basis of this theory of Dubos, cannot be called very slight. Early in the fifth century, according to him, about the time when Constantine usurped the throne of Britain and Gaul, or, as the sense shows, a little later, in consequence of the incursions of the barbarians from beyond the Rhine, the natives of Britain, taking up arms for themselves, rescued their cities from these barbarians; and the whole Armorican territory, and other provinces of Gaul, ὁ Ἀρμόριχος ἅπας, καὶ ἕτεραι Γαλατῶν ἐπαρχίαι, in imitation of the Britons, liberated themselves in the same manner, expelling the Roman rulers, and establishing an internal government: ἐκβάλλουσαι μὲν τοὺς Ῥωμαίους ἄρχοντας, οἰκεῖον δὲ κατ' εξουσίαν πολίτευμα καθιστᾶσαι. Lib. vi. c. 5. Guizot gives so much authority to this as to say of the Armoricans, "Ils se maintinrent toujours libres, entre les barbares et les Romains." Introduction à la Collection des Mémoires, vol. i. p. 336. Sismondi pays little regard to it. The proofs alleged by Daru for the existence of a king of Brittany named Conan, early in the fifth century, would throw much doubt on the Armorican republic; but they seem to me rather weak. Brittany, it may be observed by the way, was never subject to the Merovingian kings, except sometimes in name. Dubos does not think it probable that there was any central authority in what he calls the Armorican confederacy, but conceives the cities to have acted as independent states during the greater part of the fifth century. (Hist. de l'Etablissement, &c., vol. i. p. 338.) He gives, however, an enormous extent to Armorica, supposing it to have comprised Aquitaine. But, though the contrary has been proved, it is to be observed that Zosimus mentions other provinces of Gaul, ἕτερα Γαλατῶν ἐπαρχίαι, as well as Armorica. Procopius, by the word Ἀρβόρυχοι, seems to indicate all the inhabitants at least of Northern Gaul; but the passage is so ambiguous, and his acquaintance with that history so questionable, that little can be inferred from it with any confidence. On the whole, the history of Northern Gaul in the fifth century is extremely obscure, and the trustworthy evidence very scanty.

Sismondi (Hist. des Français, vol. i. p. 134) has a good passage, which it will be desirable to keep in mind when we launch into mediæval antiquities:—"Ce peu des mots a donné matière à d'amples commentaires, et au développement de beaucoup de conjectures ingénieuses. L'abbé Dubos, en expliquant le silence des historiens, a fondé sur des sousentendus une histoire assez complète de la république Armorique. Nous serons souvent appelés à nous tenir en garde contre le zèle des écrivains qui ne satisfait point l'aridité de nos chroniques, et qui y suppléent par des divinations. Plus d'une fois le lecteur

characteristics are not very dissimilar. The style of both is exceedingly bad, as has been severely noticed, along with their other defects, by Gaillard, in Observations sur l'Histoire de Velly, Villaret, et Garnier. (4 vols. 12mo. Paris, 1806.)

[This history is now but slightly esteemed in France, especially the volumes written by the Abbé Velly. The writers were too much imbued with the spirit of the old monarchy (though no adulators of kings, and rather liberal according to the standard of their own age) for those who have taken the sovereignty of the people for their creed. Nor are they critical and exact enough for the present state of historical knowledge. Sismondi and Michelet, especially the former, are doubtless superior; but the reader will not find in the latter as regular a narration of facts as in Velly and Villaret. Sismondi has as many prejudices on one side as they have on the opposite. [1848.]]

pourra être surpris en voyant à combien peu se réduit ce que nous savons réellement sur un événement assez célèbre pour avoir motivé de gros livres."

Note II.

The Franks are not among the German tribes mentioned by Tacitus, nor do they appear in history before the year 240. Guizot accedes to the opinion that they were a confederation of the tribes situated between the Rhine, the Weser, and the Main; as the Alemanni were a similar league to the south of the last river.[a] Their origin may be derived from the necessity of defending their independence against Rome; but they had become the aggressors in the period when we read of them in Roman history; and, like other barbarians in that age, were often the purchased allies of the declining empire. Their history is briefly sketched by Guizot (Essais sur l'Histoire de France, p. 53), and more copiously by other antiquarians, among whom M. Lehuerou, the latest and not the least original or ingenious, conceives them to have been a race of exiles or outlaws from other German tribes, taking the name Franc from *frech*, fierce or bold,[b] and settling at first, by necessity, near the mouth of the Elbe, whence they moved onward to seek better habitations at the expense of less intrepid, though more civilized, nations. "Et ainsi naquit la première nation de l'Europe moderne."[c] Institutions Mérovingiennes, vol. i. p. 91.

An earlier writer considers the Franks as a branch of the great stock of the Suevi, mentioned by Tacitus, who, he tells us, "majorem Germaniæ partem obtinent, propriis adhuc nationibus nominibusque discreti, quanquam in communi Suevi dicuntur. Insigne gentis obliquare crinem, nodoque substringere." De Moribus German. c. 38. Ammianus mentions the Salian Franks by name: "Francos eos quos consuetudo Salios appellavit." See a memoir in the Transactions of the Academy of Brussels, 1824, by M. Devez, "sur l'établissement des Francs dans la Belgique."

In the great battle of Châlons, the Franks fought on the Roman side against Attila; and we find them mentioned several times in the history of Northern Gaul from that time. Lehuerou (Institutions Mérovingiennes, c. 11) endeavors to prove, as Dubos had done, that they were settled in Gaul, far beyond Tournay and Cambray, under Meroveus and Childeric, though as subjects of the empire; and Luden conjectures that the whole country between the Moselle and the Somme had fallen into their hands even as early as the reign of Honorius. (Geschichte des Deutschen Volkes, vol. ii. p. 381.) This is one of the obscure and debated points in early French history. But the seat of the monarchy appears clearly to have been established at Cambray before the middle of the fifth century.

Note III.

This theory, which is partly countenanced by Gibbon, has lately been revived, in almost its fullest extent, by a learned and spirited investigator of early history, Sir Francis Palgrave, in his Rise and Progress of the English Commonwealth, i. 360; and it seems much in favor with M. Raynouard, in his Histoire du Droit Municipal en France. M.

a Alemanni is generally supposed to mean "all men." Meyer, however, takes it for another form of Arimanni, from Heermanner, soldiers.—Nouveaux Mémoires de l'Académie de Bruxelles, vol. iii. p. 439.

b This etymology had been given by Thierry, or was of older origin.

c As M. Lehuerou belongs to what is called the Roman school of French antiquaries, he should not have brought the nation from beyond the Rhine.

Lehuerou, in a late work (Histoire des Institutions Mérovingiennes et Carolingiennes, 2 vols., 1843), has in a great measure adopted it:—"Nous croyons devoir déclarer que, dans notre opinion, le livre de Dubos, malgré les erreurs trop réelles qui le déparent, et l'esprit de système qui en a considérablement exagéré les conséquences, est, de tous ceux qui ont abordé le même problème au xviii*me* siècle, celui où la question des origines Mérovingiennes se trouve le plus près de la véritable solution. Cet aveu nous dispense de détailler plus longuement les obligations que nous lui avons. Elles se révèleront d'ailleurs suffisamment d'elles-mêmes." (Introduction, p. xi.) M. Lehuerou does not, however, follow his celebrated guide so far as to overlook the necessary connection between barbarian force and its aggressive character. The final establishment of the Franks in Gaul, according to him, rested partly on the concession and consent of the emperors, who had invited them to their service, and rewarded them, as he conceives, with lands, while the progenitors of Clovis bore the royal name, partly on their own encroachments, and especially on the victory of that prince over Syagrius in 486. (Vol. i. p. 228.)

It may be alleged against Dubos that Clovis advanced into the heart of Gaul as an invader; that he defeated in battle the lieutenant of the emperor, if Syagrius were such; or, if we chose to consider him as independent, which probably in terms he was not, that the emperors of Constantinople could merely have relinquished their authority, because they had not the strength to enforce it. Gaul, like Britain, in that age, had become almost a sort of derelict possession, to be seized by the occupant; but the title of occupancy is not that of succession. It may be true that the Roman subjects of Clovis paid him a ready allegiance; yet still they had no alternative but to obey.

Twenty-five years elapsed, during which the kingdom of the Salian Franks was prodigiously aggrandized by the submission of all Northern Gaul, by the reduction of the Alemanni on the right bank of the Rhine, and by the overthrow of the Visigoths at Vouglé, which brought almost the whole of the south into subjection to Clovis. It is not disputed by any one that he reigned and conquered in his own right. No one has alleged that he founded his great dominion on any other title than that of the sword, which his Frank people alone enabled him to sustain. But about two years before his death, as Gregory of Tours relates, the emperor Anastasius bestowed upon him the dignity of consul; and this has been eagerly caught at by the school of Dubos as a fact of high importance, and as establishing a positive right of sovereignty, at least over the Romans—that is, the provincial inhabitants of Gaul, which descended to the long line of the Merovingian house. Sir Francis Palgrave, indeed, more strongly than Dubos himself, seems to consider the French monarchy as deriving its pedigree from Rome rather than the Elbe.

The first question that must naturally arise is as to the value assignable to the evidence of Gregory of Tours respecting the gift of Anastasius. Some might hesitate, at least, to accept the story in all its circumstances. Gregory is neither a contemporary nor, in such a point, an altogether trustworthy witness. His style is verbose and rhetorical; and, even in matters of positive history, scanty as are our means of refuting him, he has sometimes exposed his ignorance, and more often given a tone of improbability to his narrative. An instance of the former occurs in his third book, respecting the death of the widow of Theodoric, contradicted by known history; and for the latter we may refer to the language he puts into the mouth of Clotilda, who urges her husband to the worship of Mars and Mercury, divinities of whom he had never heard.

The main fact, however, that Anastasius conferred the dignity of

consul upon Clovis, cannot be rejected. Although it has been alleged that his name does not occur in the Consular Fasti, this seems of no great importance, since the title was merely an honorary distinction, not connecting him with the empire as its subject. Guizot, indeed, and Sismondi conceive that he was only invested with the consular robe, according to what they take to have been the usage of the Byzantine court. But Gregory, by the words *codicillos de consulatu*, seems to imply a formal grant. Nor does the fact rest solely on his evidence, though his residence at Tours would put him in possession of the local tradition. Hincmar, the famous bishop of Rheims, has left a Life of St. Remy, by whom Clovis was baptized; and, though he wrote in the ninth century, he had seen extracts from a contemporary Life of that saint, not then, he says, entirely extant, which Life may reasonably be thought to have furnished the substance of the second book of Gregory's history. We find in Hincmar the language of Gregory on the consulship of Clovis, with a little difference of expression:—" Cum quibus codicillis etiam illi Anastasius coronam auream cum gemmis, et tunicam blateam misit, et ab eâ die consul et Augustus est appellatus." (Rec. des Hist. vol. iii. p. 379.) Now, the words of Gregory are the following: " Igitur ab Anastasio imperatore codicillos de consulatu accepit, et in basilica beati Martini tunica blatea indutus est et clamyde, imponens vertici diadema. Tunc ascenso equite, aurum, argentumque in itinere illo, quod inter portam atrii basilicæ beati Martini et ecclesiam civitatis est, præsentibus populis manu propria spargens, voluntate benignissima erogavit, et ab eâ die tanquam consul aut Augustus est vocitatus." The minuteness of local description implies the tradition of the city of Tours, which Gregory would, of course, know, and renders all scepticism as to the main story very unreasonable. Thus, if we suppose the Life of St. Remy to have been the original authority, Anastasius will have sent a crown to Clovis. And this would explain the words of Gregory, " imponens vertici diadema." Such an addition to the dignity of consul is, doubtless, remarkable, and might of itself lead us to infer that the latter was not meant in its usual sense. This passage is in other respects more precise than in Gregory; it has not the indefinite and almost unintelligible words *tamquam consul*, and has *et* instead of *aut* Augustus; which latter conjunction, however, in low Latin, is often put for the former.

But, though the historical evidence is considerably strengthened by the supposition that Gregory copied a Life of St. Remigius of nearly contemporary date with the event, we do not find all our difficulty removed so as to render it implicit credence in every particular. That Clovis would be called consul by the provincial Romans after he had received the title from Anastasius is very natural; that he was ever called, even by them, Augustus—that is, Emperor—except perhaps in a momentary acclamation, we may not unreasonably scruple to believe. The imperial title would hardly be assumed by one who pretended only to a local sovereignty; nor is such a usurpation consistent with the theory that the Frank chieftain was on terms of friendship with the court of Constantinople, and in subordination to it. One or other hypothesis must surely be rejected. If Clovis was called emperor (and when did Augustus bear any other meaning?) he was no vicegerent of Anastasius, no consul of the empire. But the most material observations that arise are: first, that the dignity of consul was merely personal, and we have not the slightest evidence that any of the posterity of Clovis either acquired or assumed it; secondly, that the Franks alone were the source of power to the house of Meroveus. " The actual and legal authority of Clovis," says Gibbon, " could not receive any new accession from the consular dignity. It was a name, a shadow, an empty pageant; and, if the conqueror had been instructed to claim

the ancient prerogatives of that high office, they must have expired with the period of its annual duration. But the Romans were disposed to revere in the person of their master that antique title which the emperors condescended to assume; the barbarian himself seemed to contract a sacred obligation to respect the majesty of the republic; and the successors of Theodosius, by soliciting his friendship, tacitly forgave and almost ratified the usurpation of Gaul." (Chap. xxxviii.) It does not appear to me, therefore, very material toward the understanding French history, what was the intention of Anastasius in conferring the name of consul on the king of the Franks. It was a token of amity, no doubt; a pledge, perhaps, that the court of Constantinople renounced the hope of asserting its pretensions to govern a province so irrecoverably separated from it as Gaul; but were it even the absolute cession of a right, which, by the usual law of nations, required something far more explicit, it would not affect in any degree the real authority which Clovis had won by the sword, and had exercised for more than twenty years over the unresisting subjects of the Roman empire.

A different argument for the theory of devolution of power from the Byzantine emperor on the Franks is founded on the cession of Justinian to Theodebert, king of Austrasia, in 540. Provence, which continued in the possession of the emperors for some time after the conquest of Gaul by Clovis, had fallen into the hands of the Ostrogoths, then masters of Italy. The alliance of the Frank king was sought by both parties, at the price of what one enjoyed and the other claimed—Provence, with its wealthy cities of Marseilles and Arles. Theodebert was no very good ally, either to the Greeks or the Goths; but he occupied the territory, and after a few years it was formally ceded to him by Justinian. "That emperor," in the words of Gibbon, who has not told the history very exactly, "generously yielding to the Franks the sovereignty of the countries beyond the Alps which they already possessed, absolved the provincials from their allegiance, and established, on a more lawful, though not more solid, foundation, the throne of the Merovingians." Procopius, in his Greek vanity, pretends that the Franks never thought themselves secure of Gaul until they obtained this sanction from the emperor. "This strong declaration of Procopius," says Gibbon, "would almost suffice to justify the abbé Dubos." I cannot, however, rate the courage of that people so low as to believe that they feared the armies of Justinian, which they had lately put to flight in Italy; nor do I know that a title of sixty years' possession gains much legality by the cession of one who had asserted no claim during that period. Constantinople had tacitly renounced the western provinces of Rome by her inability to maintain them. I must, moreover, express some doubt whether Procopius ever meant to say that Justinian confirmed to the Frank sovereign his rights over the whole of Gaul. He uses, indeed, the word Γαλλίας; but that should, I think, be understood according to the general sense of the passage, which would limit its meaning to Provence, their recent acquisition, and that which the Ostrogoths had already relinquished to them. Gibbon, on the authority of Procopius, goes on to say that the gold coin of the Merovingian kings, "by a singular privilege, which was denied to the Persian monarch, obtained a legal currency in the empire." But this legal currency is not distinctly mentioned by Procopius, though he strangely asserts that it was not lawful, οὐ δέμις, for the king of Persia to coin gold with his own effigy, as if the δέμις of Constantinople were regarded at Seleucia. There is reason to believe that the Goths, as well as Franks, coined gold, which might possibly circulate in the empire, without having, strictly speaking, a legal currency. The expressions of Agathias, quoted above, that the Franks had nearly the same form of government, and

the same laws, as the Romans, may be understood as a mistaken view of what Procopius says in a passage which will be hereafter quoted, and which Agathias, a later writer, perhaps, has followed, that the Roman inhabitants of Gaul retained their institutions under the Franks; which was certainly true, though by no means more so than under the Visigoths.

Note IV.

It ought, perhaps, to be observed, that no period of ecclesiastical history, especially in France, has supplied more saints to the calendar. It is the golden age of hagiology. Thirty French bishops, under Clovis and his sons alone, are venerated in the Roman church; and not less than seventy-one saints, during the same short period, have supplied some historical information, through their Lives in Acta Sanctorum. "The foundation of half the French churches," says Sismondi, "dates from that epoch." (Vol. i. p. 308.) Nor was the seventh century much less productive of that harvest. Of the service which the Lives of the Saints have rendered to history, as well as of the incredible deficiencies of its ordinary sources, some notion may be gained by the strange fact mentioned in Sismondi, that a king of Austrasia, Dagobert II., was wholly overlooked by historians; and his reign, from 674 to 678, only retrieved by some learned men in the seventeenth century, through the Life of our Saint Wilfred, who had passed through France on his way to Rome. (Hist. des Français, vol. ii. p. 51.) But there is a diploma of this prince in Rec. des Hist. vol. iv. p. 685.

Sismondi is too severe a censurer of the religious sentiment which actuated the men of this period. It did not prevent crimes, even in those, frequently, who were penetrated by it. But we cannot impute to the ascetic superstition of the sixth and seventh centuries, as we may to the persecuting spirit of later ages, that it occasioned them—crimes, at least, which stand forth in history; for to fraud and falsehood it, no question, lent its aid. The Lives of the Saints, amid all the mass of falsehood and superstition which incrusts them, bear witness not only to an intense piety, which no one will dispute, but to much of charity and mercy toward man. But, even if we should often doubt particular facts from slenderness of proof, they are at least such as the compilers of these legends thought praiseworthy, and such as the readers of them would be encouraged to imitate.[d]

St. Bathilda, of Anglo-Saxon birth, queen of Clovis II., redeeming her countrymen from servitude, to which the barbarous manners of their own people frequently exposed them, is in some measure a set-off against the tyrant princes of the family into which she had come. And many other instances of similar virtue are attested with reasonable probability. Sismondi never fully learned to judge men according to a subjective standard—that is, their own notions of right and wrong; nor even to perceive the immediate good consequences of many principles, as well as social institutions connected with them, which we would no more willingly tolerate at present than himself. In this respect Guizot has displayed a more philosophical temper. Still there may be some caution necessary not to carry this subjective estimate of human actions too far, lest we lose sight of their intrinsic quality.

We have, unfortunately, to set against the saintly legends an enormous mass of better-attested crimes, especially of oppression and

d M. Ampère has well observed that it was not the mere interest of the story, nor even the ideal morality, which constituted the principal charm of the legends of saints; it was the constant idea of Providence supporting the faithful in those troublous times, and of saints always interfering in favor of the innocent.—Hist. Litt. de la France avant le 12ième siècle, ii. 360.

cruelty. Perhaps there is hardly any history extending over a century which records so much of this with so little information of any virtue, any public spirit, any wisdom, as the ten books of Gregory of Tours. The seventh century has no historian equally circumstantial; but the tale of the seventh century is in substance the same. The Roman fraud and perfidy mingled, in baleful confluence, with the ferocity and violence of the Frank.

> Those wild men's vices they receiv'd,
> And gave them back their own.

If the church was deeply tainted with both these classes of crime, it was at least less so, especially with the latter, than the rest of the nation. A saint might have many faults; but it is strongly to be presumed that mankind did not canonize such monsters as the kings and nobles of whom we read almost exclusively in Gregory of Tours. A late writer, actuated by the hatred of antiquity, and especially of kings, nobles, and priests, which is too much the popular creed of France, has collected from age to age every testimony to the wickedness of the powerful. His proofs are one-sided, and, consequently, there is some unfairness in the conclusions; but the facts are, for the most part, irresistibly true. (Dulaure, Hist. de Paris, passim.)

Note V.

The Mayor of the Palace appears as the first officer of the crown in the three Frank kingdoms during the latter half of the sixth century. He had the command, as Guizot supposes, of the Antrustions, or vassals of the king. Even afterwards the office was not, as this writer believes, properly elective, though in the case of a minority of the king, or upon other special occasions, the *leudes*, or nobles, chose a mayor. The first instance we find of such an election was in 575, when, after the murder of Sigebert by Fredegonde, his son Childebert being an infant, the Austrasian *leudes* chose Gogon for their mayor. There seem, however, so many instances of elective mayors in the seventh century, that, although the royal consent may probably have been legally requisite, it is hard to doubt that the office had fallen into the hands of the nobles. Thus, in 641:—"Flaochatus, genere Francus, major-domûs in regnum Burgundiæ, electione pontificum et cunctorum ducum a Nantechilde regina in hunc gradum honoris nobiliter stabilitur." (Fredegar. Chron. c. 89.) And on the election of Ebroin:—"Franci in incertum vacillantes, accepto consilio, Ebruinum in hujus honoris curam ac dignitatem statuunt." (c. 92.) On the death of Ebroin in 681, "Franci Warratonem virum illustrem in locum ejus cum jussione regis majorem-domûs palatio constituunt." These two instances were in Neustria; the aristocratic power was still greater in the other parts of the monarchy.

Sismondi adopts a very different theory, clinging a little too much to the democratic visions of Mably. "If we knew better," he says, "the constitution of the monarchy, perhaps we might find that the mayor, like the Justiciary of Aragon, was the representative, not of the great, but of the freemen, and taken generally from the second rank in society, charged to repress the excesses of the aristocracy as well as of the crown." (Hist. des Français, vol. ii. p. 4.) Nothing appears to warrant this vague conjecture, which Guizot wholly rejects, as he does also the derivation of major-domûs from *morddohmen*, a verb signifying to sentence to death, which Sismondi brings forward to sustain his fanciful analogy to the Aragonese justiciary.

The hypothesis, indeed, that the mayor of the palace was chosen out of the common freeholders, and not the highest class, is not only contrary to everything we read of the aristocratical denomination in the Merovingian kingdoms, but to a passage in Fredegarius, to which probably others might be added. Protadius, he informs us, a mayor of Brunehaut's choice, endeavored to oppress all men of high birth, that no one might be found capable of holding the charge in his room (c. 27). This, indeed, was in the sixth century, before any sort of election was known. But in the seventh the power of the great, and not of the people, meets us at every turn. Mably himself would have owned that his democracy had then ceased to exercise any power.

The Austrasian mayors of the palace were, from the reign of Clotaire II., men of great power, and taken from the house of Pepin of Landen. They carried forward, ultimately for their own aggrandizement, the aristocratic system which had overturned Brunehaut. Ebroin, on the other hand, in Neustria, must be considered as keeping up the struggle of the royal authority, which he exercised in the name of several phantoms of kings, against the encroachments of the aristocracy, though he could not resist them with final success. Sismondi (vol. ii. p. 64) fancies that Ebroin was a leader of the freemen against the nobles. But he finds a democratic party everywhere; and Guizot justly questions the conjecture (Collection des Mémoires, vol. ii. p. 320). Sismondi, in consequence of this hypothesis, favors Ebroin; for whom it may be alleged that we have no account of his character but from his enemies, chiefly the biographer of St. Leger. M. Lehuerou sums up his history with apparent justice:—"Ainsi périt, après une administration de vingt ans, un homme remarquable à tous égards, mais que le triomphe de ses ennemis a failli déshériter de sa gloire. Ses violences sont peu douteuses, mais son génie ne l'est pas davantage, et rien ne prouve mieux la terreur qu'il inspirait aux Austrasiens que les injures qu'ils lui ont prodiguées." (Institutions Carolingiennes, p. 281.)

Note VI.

Aribert, or rather Caribert, brother of Dagobert I., was declared king of Aquitaine in 628; but on his death, in 631, it became a duchy dependent on the monarchy under his two sons, with its capital at Toulouse. This dependence, however, appears to have soon ceased, in the decay of the Merovingian line; and for a century afterwards Aquitaine can hardly be considered as part of either the Neustrian or Austrasian kingdom. "L'ancienne population Romaine travaillait sans cesse à ressaisir son indépendance. Les Francs avaient conquis, mais ne possédaient vraiment pas ces contrées. Dès que leurs grandes incursions cessaient, les villes et les campagnes se soulevaient, et se confédéraient pour secouer le joug." (Guizot, Cours d'Hist. Moderne, ii. 229.) This important fact, though acknowledged in passing by most historians, has been largely illustrated in the valuable Histoire de la Gaule Méridionale, by M. Fauriel.

Aquitaine, in its fullest extent, extended from the Loire beyond the Garonne, with the exception of Touraine and the Orléannois. The people of Aquitaine, in this large sense of the word, were chiefly Romans, with a few Goths. The Franks, as a conquering nation, had scarcely taken up their abode in those provinces. But undoubtedly, the Merovingian kings possessed estates in the south of France, which they liberally bestowed as benefices upon their *leudes*, so that the chief men were frequently of Frank origin. They threw off, nevertheless, their hereditary attachments, and joined with the mass of their new countrymen in striving for the independence of Aquitaine. After the battle of

Testry, which subverted the Neustrian monarchy, Aquitaine, and even Burgundy, ceased for a time to be French; under Charles Martel they were styled the Roman countries. (Michelet, ii. 9.)

Eudon, by some called Eudes, grandson of Caribert, a prince of conspicuous qualities, gained ground upon the Franks during the whole period of Pepin Heristal's power, and united to Aquitaine, not only Provence, but a new conquest from the independent natives, Gascony. Eudon obtained in 721 a far greater victory over the Saracens than that of Charles Martel at Poitiers. The slaughter was immense, and confessed by the Arabian writers; it even appears that a funeral solemnity, in commemoration of so great a calamity, was observed in Spain for four or five centuries afterwards. (Fauriel, iii. 79.) But in its consequences it was far less important; for the Saracens, some years afterwards, returned to avenge their countrymen, and Eudon had no resource but in the aid of Charles Martel. After the retreat of the enemy it became the necessary price of the service rendered by the Frank chieftain that Aquitaine acknowledged his sovereignty. This, however, was still but nominal, till Pepin determined to assert it more seriously, and after a long war overcame the last of the ducal line sprung from Clotaire II., which had displayed, for almost a century and a half, an energy in contrast with the imbecility of the elder branch. Even this, as M. Fauriel observes, was little more than a change in the reigning family; the men of Aquitaine never lost their peculiar nationality; they remained a separate people in Gaul, a people distinguished by their character, and by the part which they were called to play in the political revolutions of the age. (Vol. iii. 300.)

Note VII.

Pepin Heristal was styled Duke of Austrasia, but assumed the mayoralty of Neustria after his great victory at Testry in 687, which humbled for a long time the great rival branch of the monarchy. But he fixed his residence at Cologne, and his family seldom kept their court at Paris. The Franks under Pepin, his son and grandson, "seemed for a second time," says Sismondi, "to have conquered Gaul; it is a new invasion of the language, the military spirit, and the manners of Germany, though only recorded by historians as the victory of the Austrasians over the Neustrians in a civil war. The chiefs of the Carlovingian family called themselves, like their predecessors, kings of the Franks: they appear as legitimate successors of Clovis and his family; yet all is changed in their spirit and their manners." (Vol. ii. p. 170.)

This revival of a truly German spirit in the French monarchy had not been sufficiently indicated by the historians of the eighteenth century. It began with the fall of Brunehaut, which annihilated the scheme, not peculiar to herself, but carried on by her with remarkable steadiness, of establishing a despotism analogous to that of the empire. The Roman policy expired with her; Clotaire II. and Dagobert I. were merely kings of barbarians, exercising what authority they might, but on no settled scheme of absolute power. Their successors were unworthy to be mentioned; though in Neustria, through their mayors of the palace, the royal authority may have been apparently better maintained than in the eastern portion of the kingdom. The kingdoms of Austrasia and Neustria rested on different bases. In the former the Franks were more numerous, less scattered, and, as far as we can perceive, had a more considerable nobility. They had received a less tincture of Roman policy. They were nearer to the mother country, which had been, as the earth to Antæus, the source of perpetually recruited

vigor. Burgundy, a member latterly of the Neustrian monarchy, had also a powerful aristocracy, but not in so great a degree, probably, of Frank, or even barbarian descent. The battle of Testry was the second epoch, as the fall of Brunehaut had been the first, in the restoration of a barbaric supremacy to the kingdom of Clovis; and the benefices granted by Charles Martel were the third. It required the interference of the Holy See, in confirming the throne of the younger Pepin, and still more the splendid qualities of Charlemagne, to keep up, even for a time, the royal authority and the dominion of law. It is highly important to keep in our minds this distinction between Austrasia and Neustria, subsisting for some ages, and, in fact, only replaced, speaking without exact geographical precision, by that of Germany and France.

Note VIII.

The Merovingian period is so briefly touched in the text, as not, I fear, to be very distinctly apprehended by every reader. It may assist the memory to sketch rather a better outline, distributing the period into the following divisions:—

I. The reign of Clovis.—The Frank monarchy is established in Gaul; the Romans and Visigoths are subdued; Christianity, in its Catholic form, is as entirely recognized as under the empire; the Franks and Romans, without greatly intermingling, preserve in the main their separate institutions.

II. The reigns of his four sons, till the death of Clotaire I., the survivor, in 561.—A period of great aggrandizement to the monarchy. Burgundy and Provence in Gaul itself, Thuringia, Suabia, and Bavaria on the other side of the Rhine, are annexed to their dominions; while every crime disgraces the royal line, and in none more than in Clotaire I.

III. A second partition among his four sons ensues: the four kingdoms of Paris, Soissons, Orleans, and Austrasia revive; but a new partition of these is required by the recent conquests, and Gontran of Orleans, without resigning that kingdom, removes his residence to Burgundy. The four kingdoms are reduced to three by the death of Caribert of Paris; one, afterwards very celebrated by the name Neustria,[e] between the Scheldt and the Loire, is formed under Chilperic, comprehending those of Paris and Soissons. Caribert of Paris had taken Aquitaine, which at his death was divided among the three survivors; Austrasia was the portion of Sigebert. This generation was fruitful of still more crimes than the last, redeemed by no golden glory of conquest. Fredegonde, the wife of Chilperic, diffuses a baleful light over this period. But while she tyrannizes with little control in the west of France, her rival and sister in crime, Brunehaut, wife of Sigebert and mother of Thierry II., his successor, has to encounter a powerful opposition from the Austrasian aristocracy; and in this part of the monarchy a new feature develops itself; the great proprietors, or nobility, act systematically with a view to restrain the royal power. Brunehaut, after many vicissitudes, and after having seen her two sons on the thrones of Austrasia and Burgundy, falls into the hands of Clotaire II., king of the other division, and is sentenced to a cruel death. Clotaire unites the three Frank kingdoms.

IV. Reigns of Clotaire II. and his son Dagobert I.—The royal power,

[e] Neustria, or Western France, is first mentioned in a diploma of Childebert, with the date of 558. But the genuineness of this has been denied: the word never occurs in the history of Gregory of Tours, as I find by the index; and M. Lehuerou seems to think that it was not much used till after the death of Brunehaut, in 613.

though shaken by the Austrasian aristocracy, is still effective. Dagobert, a prince who seems to have rather excelled most of his family, and to whose munificence several extant monuments of architecture and the arts are referred, endeavors to stem the current. He was the last of the Merovingians who appears to have possessed any distinctive character; the *Insensati* follow. After the reign of Dagobert most of the provinces beyond the Loire fall off, as it may be said, from the monarchy, and hardly belong to it for a century.

V. The fifth period begins with the accession of Clovis II., son of Dagobert, in 638, and terminates with Pepin Heristal's victory over the Neustrians at Testry, in 687. It is distinguished by the apparent equality of the two remaining kingdoms, Burgundy having now fallen into that of Neustria, and by the degradation of the royal line, in each alike, into puppets of the mayors of the palace. It is, in Austrasia, the triumph of the aristocracy, among whom the bishops are still more prominent than before. Ebroin holds the mayoralty of Neustria with an unsteady command; but in Austrasia the progenitors of Pepin Heristal grow up for two generations in wealth and power, till he becomes the acknowledged chief of that part of the kingdom, bearing the title of duke instead of mayor, and by the battle of Testry puts an end to the independence of Neustria.

VI. From this time the family of Pepin is virtually sovereign in France, though at every vacancy kings of the royal house are placed by them on the throne. Charles Martel, indeed, son of Pepin, is not acknowledged, even in Austrasia, for a short time after his father's death, and Neustria attempts to regain her independence; but he is soon called to power, defeats, like his father, the western Franks, and becomes, in almost as great a degree as his grandson, the founder of a new monarchy. So completely is he recognized as sovereign, though not with the name of king, that he divides France, as an inheritance, among his three sons. But soon one only, Pepin the Short, by fortune or desert, becomes possessor of this goodly bequest. In 752 the new dynasty acquires a legal name by the coronation of Pepin.

Note IX.

The true cause, M. Michelet observes (Hist. de France, ii. 39), of the Saxon wars, which had begun under Charles Martel, and were in some degree defensive on the part of the Franks, was the ancient antipathy of race, enhanced by the growing tendency to civilized habits among the latter. This, indeed, seems sufficient to account for the conflict, without any national antipathy. It was that which makes the Red Indian perceive an enemy in the Anglo-American, and the Australian savage in the Englishman. The Saxons, in their deep forests and scantily cultivated plains, could not bear fixed boundaries of land. Their *gau* was indefinite; the *mansus* was certain; it annihilated the barbarian's only method of combining liberty with possession of land,—the right of shifting his occupancy.*f* It is not probable, from subsequent events, that the Saxons held very tenaciously by their religion; but when Christianity first offered itself, it came in the train of a conqueror. Nor could Christianity, according at least to the ecclesiastical system, be made compatible with such a state of society as the German in that age. Hence the Saxons endeavored to burn the first churches, thus drawing retaliation on their own idols.

The first apostles of Germany were English; and of these the most

f Michelet refers to Grimm, who is excellent authority. The Saxons are likely to have maintained the old customs of the age of Tacitus longer than German tribes on the Rhine and Main.

remarkable was St. Boniface. But this had been in the time of Charles Martel and Pepin. The labors of these missionaries were chiefly in Thuringia, Franconia, and Bavaria, and were rewarded with great success. But we may here consider them only in their results on the Frank monarchy. Those parts of Germany had long been subject to Austrasia, but, except so far as they furnished troops, scarcely formed an integrant portion of that kingdom. The subjection of a heathen tribe is totally different from that of a Christian province. With the Church came churches, and for churches there must be towns, and for towns a magistracy, and for magistracy, law and the means of enforcing it. How different was the condition of Bavaria or Hesse in the ninth century from that of the same countries in the seventh! Not outlying appendages to the Austrasian monarchy, hardly counted among its subjects, but capable of standing by themselves, as co-ordinate members of the empire, an equipoise to France herself, full of populous towns, wealthy nobles and prelates, better organized and more flourishing states than their neighbors on the left side of the Rhine. Charlemagne founded eight bishoprics in Saxony, and distributed the country into dioceses.

Note X.

The project of substituting a Frank for a Byzantine sovereign was by no means new in 800. Gregory II., by a letter to Charles Martel in 741, had offered to renounce his allegiance to the empire, placing Rome under the protection of the French chief, with the title of consul or senator. The immediate government he doubtless meant to keep in the hands of the Holy See. He supplicated, at the same time, for assistance against the Lombards, which was the principal motive for this offer. Charles received the proposal with pleasure, but his death ensued before he had time to take any steps towards fulfilling so glorious a destiny. When Charlemagne acquired the rank of Patrician at Rome in 789, we may consider this as a part performance of Gregory II.'s engagement, and the supreme authority was virtually in the hands of the king of the Franks; but the renunciation of allegiance toward the Greek empire had never positively taken place, and there are said to have been some tokens of recognition of its nominal sovereignty almost to the end of the century.

It is contended by Sir F. Palgrave that Charlemagne was chosen by the Romans as lawful successor of Constantine V., whom his mother Irene had dethroned in 795, the usage of the empire having never admitted a female sovereign. And for this he quotes two ancient chronicles, one of which, however, appears to have been copied from the other. It is indeed true, which he omits to mention, that Leo III. had a singular scheme of a marriage between Charles and Irene, which would for a time have united the empire. The proposal was actually made, but prudently rejected by the Greek lady.

It remains nevertheless to be shown by what right Leo III., *cum omni Christiano populo*, that is, the priests and populace of degenerate Rome, could dispose of the entire empire, or affect to place a stranger on the throne of Constantinople; for if Charles were the successor of Constantine V., we must draw this conclusion. Rome, we should keep in mind, was not a jot more invested with authority than any other city; the Greek capital had long taken her place; and in every revolution of new Rome, the decrepit mother had without hesitation obeyed. Nor does it seem to me exceedingly material, if the case be such, that Charlemagne was not styled emperor of the West, or successor of Augustulus. It is evident that his empire, relatively to that of the Greeks, was western; and we do not find that either he or his family ever

claimed an exclusive right to the imperial title. The pretension would have been diametrically opposed both to prescriptive right and actual possession. He wrote to the emperor Nicephorus, successor of Irene, as *fraternitas vestra;* but it is believed that the Greeks never recognized the title of a western barbarian. In a later age, indeed, some presumed to reckon the emperor of Constantinople among kings. A writer of the fourteenth century says, in French:—" Or devez savoir qu'il ne doit estre sur terre qu'un seul empereur, combien que celui de Constantinople estime estre seul empereur; mais non est, il n'est fors seulement qu'un roy." (Ducange, voc. Imperator, which is worth consulting.) The kings of France and Castile, as well as our own Anglo-Saxon monarchs in the tenth century, and even those of Bulgaria, sometimes assumed the imperial title. But the Anglo-Saxon preferred that of Basileus, which was also a Byzantine appellation.

The probable design of Charlemagne, in accepting the title of emperor, was not only to extend his power as far as possible in Italy, but to invest it with a sort of sacredness and prescriptive dignity in the eyes of his barbarian subjects. These had been accustomed to hear of emperors as something superior to kings; they were themselves fond of pompous titles, and the chancery of the new Augustus soon borrowed the splendid ceremonial of the Byzantine court. His councillors approached him on their knees, and kissed his feet. Yet it does not appear from history that his own royal power, certainly very considerable before, was much enhanced after it became imperial. He still took the advice, and legislated with the consent, of his *leudes* and bishops; in fact, he continued to be a German, not a Roman, sovereign. In the reign of his family this prevalence of the Teutonic element in the Carlovingian polity became more and more evident; the bishops themselves, barbarian in origin and in manners, cannot be reckoned in the opposite scale.

This was a second failure of the attempt, or at least the scheme, of governing barbarians upon a Roman theory. The first had been tried by the sons of Clovis and the high-spirited Visigoth Brunehaut. But the associations of Roman authority with the imperial name were too striking to be lost forever; they revived again in the twelfth and thirteenth centuries with the civil law, and gained strength with the Ghibelin faction in Italy. Even in France and England, as many think, they were by no means ineffectual; though it was necessary to substitute the abstract principle of royalty for the Lex Regia of the Roman empire.

Note XI.

A question of the utmost importance had been passed over in the elevation of Charlemagne to the imperial title. It was that of hereditary succession. No allusion, as far as I have found, was made to this in the irregular act by which the pope, with what he called the Roman people, transferred their allegiance from Constantinople to Aix-la-Chapelle. It was indeed certain that the empire had not only passed for hereditary from the time of Augustus, but ever since that of Diocletian had been partible among the imperial family at the will of the possessor. Yet the whole proceeding was so novel, and the pretensions of the Holy See implied in it so indefinite, that some might doubt whether Charles had acquired, along with the rank of *imperator,* its ancient prerogatives. There was also a momentous consideration, how far his Frank subjects, accustomed latterly to be consulted on royal succession, with their rights of election, within the limits of the family, positively recognized at the accession of Pepin, and liable to become jealous of Roman theories of government, would acquiesce in a simple devolution of the

title on the eldest born as his legal birthright. In the first prospective arrangement, accordingly, which Charles made for the succession, that at Thionville, in 806, a partition among his three sons was designed, with the largest share reserved for the eldest. But though Italy, by which he meant, as he tells us, Lombardy, was given to one of the younger, care is taken by a description of the boundaries to exclude Rome itself, as well as the whole exarchate of Ravenna, become, by Pepin's donation, the patrimony of St. Peter; nor is there the least allusion to the title of emperor. Are we to believe that he relinquished the eternal city to its bishop, though styling himself, in this very instrument, Romani rector imperii, and having literally gained not another inch of territory by that dignity? It is surely more probable that he reserved the sovereignty over Rome, to be annexed to the rank of emperor whenever he should obtain that for his eldest son. And on the death of this son, and of his next brother, some years afterwards, the whole succession devolving on Louis the Debonair, Charlemagne presented this prince to the great Placitum of the nobles and bishops at Aix-la-Chapelle in 813, requesting them to name him king and emperor. No reference was made to the pope for his approbation; and thus the German principle of sovereignty gained a decisive victory over the Roman. If some claim of the pope to intermeddle with the empire was intimated at the coronation of Louis at Rheims by Stephen II. in 816, which does not seem certain, it could only have been through the pope's knowledge of the personal submissiveness to ecclesiastical power which was the misfortune of that prince. He had certainly borne the imperial title from his father's death.

In the division projected by Louis in 817, to take place on his death, and approved by an assembly at Aix, a considerable supremacy was reserved for the future emperor; he was constituted, in effect, a sort of suzerain, without whose consent the younger brothers could do nothing important. Thus the integrity of the empire was maintained, which had been lost in the scheme of Charlemagne in 806. But M. Fauriel (vol. iv. p. 83) reasonably suspects an ecclesiastical influence in suggesting this measure of 817, which was an overt act of the Roman, or imperial, against the barbarian party. If the latter consented to this in 817, it was probably either because they did not understand it, or because they trusted to setting it aside. And, as is well known, the course of events soon did this for them. "It is indisputable," says Ranke, "that the order of succession to the throne, which Louis the Pious, in utter disregard of the warnings of his faithful adherents, and in opposition to all German modes of thinking, established in the year 817, was principally brought about by the influence of the clergy." (Hist. of Reformation, Mrs. Austin's translation, vol. i. p. 9.) He attributes the concurrence of that order, in the subsequent revolt against Louis, to the endeavors he had made to deviate from the provisions of 819 in favor of his youngest son, Charles the Bald.

Note XII.

The second period of Carlovingian history, or that which elapsed from the reign of Charles the Bald to the accession of Hugh Capet, must be reckoned the transitional state, through scenes of barbarous anarchy, from the artificial scheme devised by Charlemagne, in which the Roman and German elements of civil policy were rather in conflict than in union to a new state of society—the feudal, which, though pregnant itself with great evil, was the means both of preserving the frame of European policy from disintegration, and of elaborating the moral and constitutional principles upon which it afterwards rested.

This period exhibits, upon the whole, a failure of the grand endeavor made by Charlemagne for the regeneration of his empire. This proceeded very much from the common chances of hereditary succession, especially when not counterbalanced by established powers independent of it. Three of his name, Charles the Bald, the Fat, and the Simple, had time to pull down what the great legislator and conqueror had erected. Encouraged by their pusillanimity and weakness, the nobility strove to revive the spirit of the seventh century. They entered into a coalition with the bishops, though Charles the Bald had often sheltered himself behind the crosier; and they compelled his son, Louis the Stammerer, not only to confirm their own privileges and those of the Church, but to style himself "King, by the grace of God and election of the people;" which, indeed, according to the established constitution, was no more than truth, since the absolute right to succession was only in the family. The inability of the crown to protect its subjects from their invaders rendered this assumption of aristocratic independence absolutely necessary. In this age of agony, Sismondi well says, the nation began to revive; new social bodies sprang from the carcass of the great empire. France, so defenceless under the Bald and the Fat Charleses, bristled with castles before 930. She renewed the fable of Deucalion; she sowed stones, and armed men rose out of them. The lords surrounded themselves with vassals; and had not the Norman incursions ceased before, they would have met with a much more determined resistance than in the preceding century. (Hist. des Français, iii. 218, 378; iv. 9.)

Notwithstanding the weakness of the throne, the promise of the Franks to Pepin, that they would never elect a king out of any other family, though broken on two or three occasions in the tenth century, seems to have retained its hold upon the nation, so that an hereditary right in his house was felt as a constitutional sentiment, until experience and necessity overcame it. The first interruption to this course was at the election of Eudes, on the death of Charles the Fat, in 888. Charles the Simple, son of Carloman, a prince whose short and obscure reign over France had ended in 884, being himself the only surviving branch, in a legitimate line, of the imperial house (for the frequent deaths of those princes without male issue is a remarkable and important circumstance), was an infant three years old. The kingdom was devastated by the Normans (whom it was just beginning to resist with somewhat more energy than for the last half-century; and Eudes, a man of considerable vigor, possessed several counties in the best parts of France. The nation had no alternative but to choose him for their king. Yet, when Charles attained the age of fifteen, a numerous party supported his claim to the throne, which he would probably have substantiated, if the disparity of abilities between the competitors had been less manifest. Eudes, at his death, is said to have recommended Charles to his own party; and it is certain that he succeeded without opposition. His own weak character, however, exposing him to fresh rebellion, Robert, brother of Eudes, and his son-in-law Rodolph, became kings of France; that is, we find their names in the royal list, and a part of the kingdom acknowledged their sovereignty. But the south stood off altogether, and Charles preserved the allegiance of the northeastern provinces. Robert, in fact, who was killed one year after his partisans had proclaimed him, seems to have no great pretensions, *de facto* any more than *de jure*, to be reckoned at all; nor does any historian give the appellation of Robert II. to the son of Hugh Capet. The father of Hugh Capet, Hugh the Great, son of Robert and nephew of Eudes, being Count of Paris and Orleans, who had bestowed the crown on his brother-in-law Rodolph of Burgundy, instead of wearing it himself, paid such deference to the prejudices of at least the majority of the nation in favor of the house of Charlemagne, that he procured the elec-

tion of Louis IV., son of Charles the Simple, a boy of thirteen years, and then an exile in England; from which circumstances he has borne the name of Outremer. And though he did not reign without some opposition from his powerful vassal, he died in possession of the crown, and transmitted it to be worn by his son Lothaire, and his grandson Louis V. It was on the death of this last young man that Hugh Capet thought it time to set aside the rights of Charles, the late king's uncle, and call himself king, with no more national consent than the prelates and barons who depended on him might afford, principally, it seems, through the adherence of Adalberon, archbishop of Rheims, a city in which the kings were already wont to receive the crown. Such is the national importance which a merely local privilege may sometimes bestow. Even the voice of the capital, regular or tumultuous, which in so many revolutions has determined the obedience of a nation, may be considered as little more than a local superiority.

A writer distinguished among living historians, M. Thierry, has found a key to all the revolutions of two centuries in the antipathy of the Romans—that is, the ancient inhabitants—to the Franks or Germans. The latter were represented by the house of Charlemagne; the former by that of Robert the Brave, through its valiant descendants, Eudes, Robert, and Hugh the Great. And this theory of races, to which M. Thierry is always partial, and recurs on many occasions, has seemed to the judicious and impartial Guizot the most satisfactory of all that have been devised to elucidate the Carlovingian period, though he does not embrace it to its full extent. (Hist. de la Civilisation en France, Leçon 24.) Sismondi (vol. iii. p. 58) had said in 1821, what he had probably written as early as M. Thierry: " La guerre entre Charles et ses deux frères fut celle des peuples romains, des Gaules qui rejetaient le joug germanique; la querelle insignifiante des rois fut soutenue avec ardeur, parce qu'elle s'unissait à la querelle des peuples; et tous ces préjugés hostiles qui s'attachent toujours aux différences des langues et des mœurs, donnèrent de la constance et de l'acharnement aux combattans." This relates, indeed, to an earlier period, but still to the same conflict of races which M. Thierry has taken as the basis of the resistance made by the Neustrian provinces to the later Carlovingians. Thierry finds a similar contest in the wars of Louis the Debonair. In this he is compelled to suppose that the Neustrian Franks fell in with the Gauls, among whom they lived. But it may well be doubted whether the distinction of Frank descent, and consequently of national supremacy, was obliterated in the first part of the ninth century. The name of *Franci* was always applied to the whole people; the kings are always *reges Francorum;* so that we might in some respects rather say that the Gauls or Romans had been merged in the dominant races than the reverse. Wealth, also, and especially that springing from hereditary benefices, was chiefly in the hands of the barbarians; they alone, as is generally believed, so long as the distinction of personal law subsisted, were summoned to county or national assemblies; they perhaps retained, in the reign of Louis the Debonair, though we cannot speak decisively as to this, their original language. It has been observed that the famous oath in the Romance language, pronounced by Louis of Germany at the treaty of Strasburg, in 842, and addressed to the army of his brother Charles the Bald, bears more traces of the southern, or Provençal, than of the northern dialect; and it is probable that the inhabitants of the southern provinces, whatever might have been the origin of their ancestors, spoke no other. This would not be conclusive as to the Neustrian Franks. But this is a disputable question.

A remarkable presumption of the superiority still retained by the Franks as a nation, even in the south of France, may be drawn from the Placitum, at Carcassonne, in 918. (Vaissette, Hist. de Languedoc, vol.

ii. Append. p. 56; Meyer, Institutions Judiciaires, vol. i. p. 419.) In this we find named six Roman, four Gothic, and eight Salian judges. It is certain that these judges could not have been taken relatively to the population of the three races in that part of France. Does it not seem most probable that the Franks were still reckoned the predominant people? Probably, however, the personal distinction, founded on difference of laws, expired earlier in Neustria; not that the Franks fell into the Roman jurisprudence, but that the original natives adopted the feudal customs.

This specious theory of hostile races, in order to account for the downfall of the Carlovingian, or Austrasian, dynasty, has not been unanimously received, especially in the extent to which Thierry has urged it. M. Gaudet, the French editor of Richer (a contemporary historian, whose narrative of the whole period, from the accession of Eudes to the death of Hugh Capet, is published by Pertz in the Monumenta Germaniæ Historica, vol. iii., and contains a great quantity of new and interesting facts, especially from A.D. 966 to 987), appeals to this writer in contradiction of the hypothesis of M. Thierry. The appeal, however, is not solely upon his authority, since the leading circumstances were sufficiently known; and, to say the truth, I think that more has been made of Richer's testimony in this particular view than it will bear. Richer belonged to a monastery at Rheims, and his father had been a man of some rank in the confidence of Louis IV. and Lothaire. He had, therefore, been nursed in respect for the house of Charlemagne, though, with deference to his editor, I do not perceive that he displays any repugnance to the change of dynasty.

Though the differences of origin and language, so far as they existed, might be by no means unimportant in the great revolution near the close of the tenth century, they cannot be relied upon as sufficiently explaining its cause. The partisans of either family were not exclusively of one blood. The house of Capet itself was not of Roman, but probably of Saxon descent. The difference of races had been much effaced after Charles the Bald, but it is to be remembered that the great beneficiaries, the most wealthy and potent families in Neustria or France, were of barbarian origin. One people, so far as we can distinguish them, was by far the more numerous; the other, of more influence in political affairs. The personal distinction of law, however, which had been the test of descent, appears not to have been preserved in the north of France much after the ninth century; and the Roman, as has been said above, had yielded to the barbaric element—to the feudal customs. The Romance language, on the other hand, had obtained a complete ascendency; and that not only in Neustria, or the parts west of the Somme, but throughout Picardy, Champagne, and part of Flanders. But if we were to suppose that these regions were still in some way more Teutonic in sentiment than Neustria, we certainly could not say the same of those beyond the Loire. Aquitaine and Languedoc, almost wholly Roman, to use the ancient word, or French, as they might now be called, among whose vine-covered hills the barbarians of the Lower Rhine had hardly formed a permanent settlement, or, having done so, had early cast off the slough of their rude manners, had been the scenes of a long resistance to the Merovingian dynasty. The tyranny of Childeric and Clotaire, the barbarism of the Frank invaders, had created an indelible hatred of their yoke. But they submitted without reluctance to the more civilized government of Charlemagne, and displayed a spontaneous loyalty towards his line. Never did they recognize, at least without force, the Neustrian usurpers of the tenth century, or date their legal instruments, in truth the chief sign of subjection that they gave, by any other year than that of the Carlovingian sovereign. If Charles the Simple reaped little but this nominal

allegiance from his southern subjects, he had the satisfaction to reflect that they owned no one else.

But a rapacious aristocracy had pressed so hard on the weakness of Charles the Bald and his descendants that, the kingdom being wholly parcelled in great fiefs, they had not the resources left to reward self-interested services as before, nor to resist a vassal far superior to themselves. Laon was much behind Paris in wealth and populousness, and yet even the two capitals were inadequate representatives of the proportionate strength of the king and the count. Power, as simply taken, was wholly on one side; yet on the other was prejudice, or rather an abstract sense of hereditary right, and this sometimes became a source of power. But the long greatness of one family, its manifest influence over the succession to the throne, the conspicuous men whom it produced in Eudes and Hugh the Great, had silently prepared the way for a revolution, neither unnatural nor premature, nor in any way dangerous to the public interests. It is certainly probable that the Neustrian French had come to feel a greater sympathy with the house of Capet than with a line of kings who rarely visited their country, and whom they could not but contemplate as in some adverse relation to their natural and popular chiefs. But the national voice was not greatly consulted in those ages. It is remarkable that several writers of the nineteenth century, however they may sometimes place the true condition of the people in a vivid light, are constantly relapsing into a democratic theory. They do not by any means underrate the oppressed and almost servile condition of the peasantry and burgesses, when it is their aim to draw a picture of society; yet in reasoning on a political revolution, such as the decline and fall of the German dynasty, they ascribe to these degraded classes both the will and the power to effect it. The proud nationality which spurned a foreign line of princes could not be felt by an impoverished and afflicted commonalty. Yet when M. Thierry alludes to the rumor that the family of Capet was sprung from the commons (some said, as we read in Dante, from a butcher), he adds,—"Cette opinion, qui se conserva durant plusieurs siècles, ne fut pas nuisible à sa cause,"—as if there had been as effective a *tiers-état* in 987 as 800 years afterward. If, however, we are meant only to seek this sentiment among the nobles of France, I fear that self-interest, personal attachments, and a predominant desire of maintaining their independence against the crown, were motives far more in operation than the wish to hear the king speak French instead of German.

It seems, upon the whole, that M. Thierry's hypothesis, countenanced as it is by M. Guizot, will not afford a complete explanation of the history of France between Charles the Fat and Hugh Capet. The truth is, that the accidents of personal character have more to do with the revolutions of nations than either philosophical historians or democratic politicians like to admit. If Eudes and Hugh the Great had been born in the royal line, they would have preserved far better the royal power. If Charles the Simple had not raised too high a favorite of mean extraction, he might have retained the nobles of Lorraine and Champagne in their fidelity. If Adalberon, archbishop of Rheims, had been loyal to the house of Charlemagne, that of Capet would not, at least so soon, have ascended the throne. If Louis V. had lived some years, and left a son to inherit the lineal right, the more precarious claim of his uncle would not have undergone a disadvantageous competition with that of a vigorous usurper. M. Gaudet has well shown, in his notice on Richer, that the opposition of Adalberon to Charles of Lorraine was wholly on personal grounds. No hint is given of any national hostility; but whatever of national approbation was given to the new family, and doubtless in Neustrian France it was very prevalent, must rather be ascribed to their own reputation than to any peculiar antipathy toward

their competitor. Hugh Capet, it is recorded, never wore the crown, though styling himself king, and took care to procure, in an assembly held in Paris, the election of his son Robert to succeed him; an example which was followed for several reigns.

A late Belgian writer, M. Gérard, in a spirited little work, " La Barbarie Franque et la Civilisation Romaine " (Bruxelles, 1845), admitting the theory of the conflict of races, indignantly repels the partisans of what has been called the Roman element. Thierry, Michelet, and even Guizot, are classed by him as advocates of a corrupted race of degenerate provincials, who called themselves Romans, endeavoring to set up their pretended civilization against the free and generous spirit of the barbarians from whom Europe has derived her proudest inheritance. Avoiding the aristocratic arrogance of Boulainvilliers, and laughing justly at the pretensions of modern French nobles, if any such there are, which I disbelieve, who vaunt their descent as an order from the race of Franks, he bestows his admiration on the old Austrasian portion of the monarchy, to which, as a Belgian, he belongs. But in his persuasion that the two races were in distinct opposition to each other, and have continued so ever since, he hardly falls short of Michelet.

I will just add to this long note a caution to the reader, that it relates only to the second period of the Carlovingian kings, that from 888 to 987. In the reigns of Louis the Debonair and Charles the Bald I do not deny that the desire for the separation of the empire was felt on both sides. But this separation was consummated at Verdun in 843, except that, the kingdom of Lorraine being not long afterward dismembered, a small portion of the modern Belgium fell into that of France.

Note XIII.

The cowardice of the French, during the Norman incursions of the ninth century, has struck both ancient and modern writers, considering that the invaders were by no means numerous, and not better armed than the inhabitants. No one, says Paschasius Radbert, could have anticipated that a kingdom so powerful, extensive, and populous would have been ravaged by a handful of barbarians. (Mém. de l'Acad. des Inscr. vol. xv. p. 639.) Two hundred Normans entered Paris, in 865, to take away some wine, and retired unmolested; their usual armies seem to have been only of a few hundreds. (Sismondi, vol. iii. p. 170.) Michelet even fancies that the French could not have fought so obstinately at Fontenay as historians relate, on account of the effeminacy which ecclesiastical influence had produced. This is rather an extravagant supposition. But panic is very contagious, and sometimes falls on nations by no means deficient in general courage. It is to be remembered that the cities, even Paris, were not fortified (Mém. de l'Acad. vol. xvii. p. 289); that the government of Charles the Bald was imbecile; that no efforts were made to array and discipline the people; that the feudal polity was as yet incomplete and unorganized. Can it be an excessive reproach, that the citizens fled from their dwellings, or redeemed them by money from a terrible foe against whom their mere superiority of numbers furnished no security? Every instance of barbarous devastation aggravated the general timidity. Aquitaine was in such a state that the pope removed the archbishop of Bordeaux to Bourges, because his province was entirely wasted by the pagans. (Sismondi, vol. iii. p. 210.) Never was France in so deplorable a condition as under Charles the Bald; the laity seem to have deserted the national assemblies; almost all his capitularies are ecclesiastical; he was the mere servant of his bishops. The clergy were now at their zenith; and it has been supposed that, noble families becoming extinct

(for few names of laymen appear at this time in history), the Church, which always gained and never lost, took the ascendant in national councils. And this contributed to render the nation less warlike, by depriving it of its natural leaders. It might be added, according to Sismondi's very probable suggestion, that the faith in relics, encouraged by the Church, lowered the spirit of the people. (Vol. iii. *passim;* Michelet, vol. ii. p. 120, *et post.*) And it is a quality of superstition not to be undeceived by experience. Some have attributed the weakness of France at this period to the bloody battle of Fontenay, in 841. But if we should suppose the loss of the kingdom on that day to have been forty thousand, which is a high reckoning, this would not explain the want of resistance to the Normans for half a century.

The beneficial effect of the cession of Normandy has hardly been put by me in sufficiently strong terms. No measure was so conducive to the revival of France from her abasement in the ninth century. The Normans had been distinguished by a peculiar ferocity toward priests; yet when their conversion to Christianity was made the condition of their possessing Normandy, they were ready enough to comply, and in another generation became among the most devout of the French nation. It may be observed that pagan superstitions, though they often take great hold on the imagination, seldom influence the conscience or sense of duty; they are not infinite or moral enough for such an effect, which belongs to positive religions, even when false. And as their efficacy over the imagination itself is generally a good deal dependent on local associations, it is likely to be weakened by a change of abode. But a more certain explanation of the new zeal for Christianity which sprang up among the Normans may be found in the important circumstance, that, having few women with them, they took wives (they had made widows enough) from the native inhabitants. These taught their own faith to their children. They taught also their own language; and in no other manner can we so well account for the rapid extinction of that of Scandinavia in that province of France.

Sismondi discovers two causes for the determination of the Normans to settle peaceably in the territory assigned to them: the devastation which they had made along the coast, rendering it difficult to procure subsistence, and the growing spirit of resistance in the French nobility, who were fortifying their castles and training their vassals on every side. But we need not travel far for an inducement to occupy the fine lands on the Seine and Eure. Piracy and plunder had become their resource, because they could no longer find subsistence at home; they now found it abundantly in a more genial climate. They would probably have accepted the same terms fifty years before.

Note XIV.

This has been put in the strongest language by Sismondi, Thierry, and other writers. Guizot, however, thinks that it has been urged too far, and that the first four Capetians were not quite so insignificant in their kingdom as has been asserted. "When we look closely at the documents and events of their age, we see that they have played a more important part, and exerted more influence, than is ascribed to them. Read their history; you will see them interfere incessantly, whether by arms or by negotiation, in the affairs of the county of Burgundy, of the county of Anjou, of the county of Maine, of the duchy of Guienne; in a word, in the affairs of all their neighbors, and even of very distant fiefs. No other suzerain certainly, except the dukes of Normandy, who conquered a kingdom, took a part at that time so frequently, and at so great a distance from the centre of his domains. Turn over the letters

of contemporaries, for example those of Fulbert and of Yves, bishops of Chartres, or those of William III., duke of Guienne, and many others; you will see that the king of France was not without importance, and that the most powerful suzerains treated him with great deference." He appeals especially to the extant act of the consecration of Philip I., in 1059, where a duke of Guienne is mentioned among the great feudatories, and asks whether any other suzerain took possession of his rank with so much solemnity. (Civilisation en France, Leçon, 42.) "As there was always a country called France and a French people, so there was always a king of the French; very far indeed from ruling the country called his kingdom, and without influence on the greater part of the population, but yet no foreigner, and with his name inscribed at the head of the deeds of all the local sovereigns, as one who was their superior, and to whom they owed several duties." (Leçon 43.) It may be observed also that the Church recognized no other sovereign; not that all the bishops held of him, for many depended on the great fiefs, but the ceremony of consecration game him a sort of religious character, to which no one else aspired. And Suger, the politic minister of Louis VI. and Louis VII., made use of the bishops to maintain the royal authority in distant provinces. (Leçon 42.) This nevertheless rather proves that the germ of future power was in the kingly office than that Hugh, Robert, Henry, and Philip exercised it. The most remarkable instance of authority during their reigns was the war of Robert in Burgundy, which ended in his bestowing that great fief on his brother. I have observed that the duke of Guienne subscribes a charter of Henry I. in 1051. (Rec. des Historiens, vol. xi. p. 589.) Probably there are other instances. Henry uses a more pompous and sovereign phraseology in his diplomas than his father; the young lion was trying his roar.

I concur on the whole in thinking, with M. Guizot, that in shunning the language of uninformed historians, who spoke of all kings of France as equally supreme, it had become usual to depreciate the power of the first Capetians rather too much. He had, however, to appearance, done the same a few years before the delivery of these lectures, in 1829; for in his Collection of Memoirs (vol. i. p. 6, published in 1825), he speaks rather differently of the first four reigns:—"C'est l'époque où le royaume de France et la nation française n'ont existé, à vrai dire, que de nom." He observes, also, that the chroniclers of the royal domain are peculiarly meagre, as compared with those of Normandy.

Note XV.

It may excite surprise that in any sketch, however slight, of the reign of Philip IV., no mention should be made of an event, than which none in his life is more celebrated—the fate of the Knights Templars. But the truth is, that when I first attended to the subject, almost forty years since, I could not satisfy my mind on the disputed problem as to the guilt imputed to that order, and suppressed a note which I had written, as too inconclusive to afford any satisfactory decision. Much has been published since on the Continent, and the question has assumed a different aspect; though, perhaps, I am not yet more prepared to give an absolutely determinate judgment than at first.

The general current of popular writers in the eighteenth century was in favor of the innocence of the Templars; in England it would have been almost paradoxical to doubt of it. The rapacious and unprincipled character of Philip, the submission of Clement V. to his will, the apparent incredibility of the charges from their monstrousness, the just prejudice against confessions obtained by torture and retracted afterwards

—the other prejudice, not always so just, but in the case of those not convicted on fair evidence deserving a better name in favor of assertions of innocence made on the scaffold and at the stake—created, as they still preserve, a strong willingness to disbelieve the accusations which came so suspiciously before us. It was also often alleged that contemporary writers had not given credit to these accusations, and that in countries where the inquiry had been less iniquitously conducted no proof of them was brought to light. Of these two grounds for acquittal, the former is of little value in a question of legal evidence, and the latter is not quite so fully established as we could desire.

Raynouard, who might think himself pledged to the vindication of the Knights Templars by the tragedy he had written on their fate, or at least would naturally have thus imbibed an attachment to their cause, took up their defence in a History of the Procedure. This has been reckoned the best work on that side, and was supposed to confirm their innocence. The question appears to have assumed something of a party character in France, as most history does; the honor of the crown, and still more of the church, had advocates; but there was a much greater number, especially among men of letters, who did not like a decision the worse for being derogatory to the credit of both. Sismondi, it may easily be supposed, scarcely treats it as a question with two sides; but even Michaud, the firm supporter of church and crown, in his History of the Crusades, takes the favorable view. M. Michelet, however, not under any bias towards either of these, and manifestly so desirous to acquit the Templars that he labors by every ingenious device to elude or explain away the evidence, is so overcome by the force and number of testimonies that he ends by admitting so much as leaves little worth contending for by their patrons. He is the editor of the "Procès des Templiers," in the "Documens Inédits, 1841," and had previously given abundant evidence of his acquaintance with the subject in his "Histoire de France," vol. iv. pp. 243, 345. (Bruxelles edition.)

But the great change that has been made in this process, as carried forward before the tribunal of public opinion from age to age, is owing to the production of fresh evidence. The deeply learned orientalist, M. von Hammer, now Count Hammer Purgstall, in the sixth volume of a work published at Vienna in 1818, with the title "Mines de l'Orient exploitées,"[g] inserted an essay in Latin, "Mysterium Baphometis Revelatum, seu Fratres Militiæ Templi qua Gnostici et quidem Ophiani, Apostasiæ, Idoloduliæ, et Impuritatis convicti per ipsa eorum Monumenta." This is designed to establish the identity of the idolatry ascribed to the Templars with that of the ancient Gnostic sects, and especially with those denominated Ophites, or worshippers of the serpent; and to prove also that the extreme impurity which forms one of the revolting and hardly credible charges adduced by Philip IV. is similar in all its details to the practice of the Gnostics.

This attack is not conducted with all the coolness which bespeaks impartiality; but the evidence is startling enough to make refutation apparently difficult. The first part of the proof, which consists in identifying certain Gnostic idols, or, as some suppose, amulets, though it comes much to the same, with the description of what are called Baphometic, in the proceedings against the Templars, published by Dupuy, and since in the "Documens Inédits," is of itself sufficient to raise a considerable presumption. We find the word *metis* continually on these images, of which von Hammer is able to describe twenty-four. Baphomet is a secret word ascribed to the Templars. But the more important evidence is that furnished by the comparison of sculptures ex-

[g] I give this French title, but there is also a German title-page, as most of the memoirs are either in that language or in Latin.

tant on some Gnostic and Ophitic bowls with those in churches built by the Templars. Of these there are many in Germany, and some in France. Von Hammer has examined several in the Austrian dominions, and collected accounts of others. It is a striking fact that in some we find, concealed from the common observer, images and symbols extremely obscene; and as these, which cannot here be more particularly adverted to, betray the depravity of the architects, and cannot be explained away, we may not so much hesitate as at first to believe that impiety of a strange kind was mingled up with this turpitude. The presumptions, of course, from the absolute identity of many emblems in churches with the Gnostic superstitions in their worst form, grow stronger and stronger by multiplication of instances; and though coincidence might be credible in one, it becomes infinitely improbable in so many. One may here be mentioned, though among the slightest resemblances. The Gnostic emblems exhibit a peculiar form of cross, **T**; and this is common in the churches built by the Templars. But the freemasons, or that society of architects to whom we owe so many splendid churches, do not escape M. von Hammer's ill opinion better than the Templars. Though he conceives them to be of earlier origin, they had drunk at the same foul spring of impious and impure Gnosticism. It is rather amusing to compare the sympathy of our own modern ecclesiologists with those who raised the mediæval cathedrals, their implicit confidence in the piety which ennobled the conceptions of these architects, with the following passage in a memoir by M. von Hammer, "Sur deux Coffrets Gnostiques du moyen Age, du cabinet de M. le duc de Blacas. Paris, 1832."

"Les architectes du moyen âge, initiés dans tous les mystères du Gnosticisme le plus dépravé, se plaisaient à en multiplier les symboles au dehors et au dedans de leurs églises; symboles dont le véritable sens n'était entendu que des adeptes, et devaient rester voilés aux yeux des profanes. Des figures scandaleuses, semblables à celles des églises de Montmorillon et de Bordeaux, se retrouvent sur les églises des Templiers à Eger en Bohême, à Schongrabern en Autriche, à Fornuovi près de Parme, et en d'autres lieux; nommément le chien (canis aut gattus niger) sur les bas-reliefs de l'église gnostique d'Erfurt." (p. 9.) The Stadinghi, heretics of the thirteenth century, are charged, in a bull of Gregory IX., with exactly the same profaneness, even including the black cat, as the Templars of the next century. This is said by von Hammer to be confirmed by sculptures. (p. 7.)

The statutes of the Knights Templars were compiled in 1128, and, as it is said, by St. Bernard. They have been published in 1840 from manuscripts at Dijon, Rome, and Paris, by M. Maillard de Chambure, Conservateur des Archives de Bourgogne.

The title runs—"Règles et Statuts secrets des Templiers." But as the French seems not so ancient as the above date, they may, perhaps, be a translation. It will be easily supposed that they contain nothing but what is pious and austere. The knights, however, in their intercourse with the East, fell rapidly into discredit for loose morals and many vices; so that von Hammer rather invidiously begins his attack upon them by arguing the *à priori* probability of what he is about to allege. Some have accordingly endeavored to steer a middle course; and, discrediting the charges brought generally against the order, have admitted that both the vice and the irreligion were truly attributed to a great number. But this is not at all the question; and such a pretended compromise is nothing less than an acquittal. The whole accusations which destroyed the order of the Temple relate to its secret rites, and to the mode of initiation. If these were not stained by the most infamous turpitude, the unhappy knights perished innocently, and the guilt of their death lies at the door of Philip the Fair.

The novel evidence furnished by sculpture against the Templars has not been universally received. It was early refuted, or attempted to be refuted, by Raynouard and other French writers. "Il est reconnu aujourd'hui, même en Allemagne," says M. Chambure, editor of the Régles et Statuts secrets des Templiers, "que le prétendu culte baphometique n'est qu'une chimère de ce savant, fondée sur un erreur de numismatique et d'architectonographie." (p. 82.) As I am not competent to form a decisive opinion, I must leave this for the more deeply learned. The proofs of M. von Hammer are at least very striking, and it is not easy to see how they have been overcome. But it is also necessary to read the answer of Raynouard in the "Journal des Savans" for 1819, who has been partially successful in repelling some of his opponent's arguments, though it appeared to me that he had left much untouched. It seems that the architectural evidence is the most positive, and can only be resisted by disproving its existence, or its connection with the Freemasons and Templars. [1848.]

Note XVI.

I have followed the common practice of translating Jeanne d'Arc by Joan of Arc. It has been taken for granted that Arc is the name of her birthplace. Southey says,—

> She thought of Arc, and of the dingled brook
> Whose waves, oft leaping in their craggy course,
> Made dance the low-hung willow's dripping twigs;
> And, where it spread into a glassy lake,
> Of that old oak, which on the smooth expanse
> Imaged its hoary mossy-mantled boughs.

And in another place,—

> ——— her mind's eye
> Beheld Domrémy and the plains of Arc.

It does not appear, however, that any such place as Arc exists in that neighborhood, though there is a town of that name at a considerable distance. Joan was, as is known, a native of the village of Domrémy in Lorraine. The French writers all call her Jeanne d'Arc, with the exception of one, M. Michelet (vii. 62), who spells her name Darc, which in a person of her birth seems more probable, though I cannot account for the uniform usage of an apostrophe and capital letter.

I cannot pass Southey's "Joan of Arc" without rendering homage to that early monument of his genius, which, perhaps, he rarely surpassed. It is a noble epic, never languid and seldom diffuse; full of generous enthusiasm, of magnificent inventions, and with a well-constructed fable, or rather selection of history. Michelet, who thinks the story of the Maid unfit for poetry, had apparently never read Southey; but the author of an article in the "Biographie Universelle" says very well,—"Le poëme de M. Southey en Anglais, intitulé 'Joan of Arc,' est la tentative la plus heureuse que les Muses aient faites jusqu'ici pour célébrer l'héroïne d'Orléans. C'est encore une des singularités de son histoire de voir le génie de la poësie Anglaise inspirer de beaux vers en son honneur, tandis que celui de la poësie Française a été jusqu'ici rebelle à ceux qui ont voulu la chanter, et n'a favorisé que celui qui a outragé sa mémoire." If, however, the muse of France has done little justice to her memory, it has been reserved for another Maid of Orleans, as she has well been styled, in a different art, to fix the image of the first in our minds, and to combine, in forms only less enduring than those of poetry, the purity and inspiration with the unswerving heroism of the immortal Joan.

BOOK II.

THE FEUDAL SYSTEM.

CHOICE EXAMPLES OF EARLY PRINTING AND ENGRAVING.

Fac-similes from Rare and Curious Books.

PORTRAIT OF THE EMPEROR MAXIMILIAN.

None of the portraits executed by Albrecht Dürer surpass in spirit or characteristic vigor that of his friend and patron, the Emperor Maximilian I., of which this specimen is a fac-simile. The Emperor is represented wearing the picturesque beret of the period, the material of which appears to be black velvet, bordered with a narrow edging of sable, and ornamented with a decorative gold medallion, on which the figures of the Virgin Mary and the Infant Christ are chased in relief.

Scarcely less attractive than the portrait itself is the rich bordering or framework within which this portrait of Maximilian is enclosed. The most striking features in this fine specimen of decorative design are the griffins which support the Imperial shield and crown. The Latin inscription on each side of the head is a copy of the inscription of the coins of the Roman Emperor Augustus, with the addition of the name of Maximilian, and the German inscription: "The True Prince and Emperor Maximilian, on the 12th day of January, and in the fifty-ninth year of his age, happily departed from this life in the year of our Lord 1519." The original block came into the possession of the English archæologist, the Earl of Arundel, in the year 1623.

IMPERATOR
DIVVS MAXI
PIVS FELIX
CAESAR
MILIANVS
AVGVSTVS.
Der Teür Fürst Kayser Maximilianus ist auff den xij tag des Jenners seins alters im
lix Jar seligklich von dyser zeyt geschaiden Anno domini. 1519.

BOOK II.

THE FEUDAL SYSTEM.

PART I.

State of Ancient Germany—Effects of the Conquest of Gaul by the Franks—Tenures of Land—Distinction of Laws—Constitution of the Ancient Frank Monarchy—Gradual Establishment of Feudal Tenures—Principles of a Feudal Relation—Ceremonies of Homage and Investiture—Military Service—Feudal Incidents of Relief, Aid, Wardship, etc.—Different Species of Fiefs—Feudal Law-Books.

Germany, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance. Their country, overspread with forests and morasses, afforded no large proportion of arable land. Nor did they ever occupy the same land two years in succession, if what Cæsar tells us may be believed, that fresh allotments were annually made by the magistrates.[a] But this could not have been an absolute abandonment of land once cultivated, which Horace ascribes to the migratory Scythians. The Germans had fixed though not contiguous dwellings; and the inhabitants of the *gau* or township must have continued to till the same fields, though it might be with varying rights of separate property.[b] They had kings elected out of particular families; and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice. But the power of each was greatly limited; and the decision of all leading questions, though subject to the previous deliberation of the

a Magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui una coierunt, quantum iis, et quo loco visum est, attribuunt agri, atque anno post alio transire cogunt. Cæsar, l. vi. Tacitus confirms this: Arva per annos mutant. De Mor. Germ. c. 26.

b Cæsar has not written, probably, with accurate knowledge, when he says, Vita omnis in venationibus et studiis rei militaris consistit. . . . . Agriculturæ non student, nec quisquam agri modum certum aut fines proprios habet. De Bello Gallico, l. vi. These expressions may be taken so as not to contradict Tacitus. But Luden, who had examined the ancient history of his country with the most persevering diligence, observes that Cæsar knew nothing of the Germans, except what he had collected concerning the Suevi or the Marcomanni. Geschichte der Deutschen Volkes, I. 481.

chieftains, sprang from the free voice of a popular assembly.[c] The principal men, however, of a German tribe fully partook of that estimation which is always the reward of valor and commonly of birth. They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field; whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer. These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same stage of manners throughout the world. And although, in the lapse of four centuries between the ages of Tacitus and Clovis, some change was wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken. If the Salic laws were in the main drawn up before the occupation of Gaul by the Franks, as seems the better opinion, it is manifest that lands were held by them in determinate several possession; and in other respects it is impossible that the manners described by Tacitus should not have undergone some alteration.[d]

When these tribes from Germany and the neighboring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors. The Burgundians and Visigoths took two-thirds of their respective conquests, leaving the remainder to the Roman proprietor. Each Burgundian was quartered, under the gentle name of guest, upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate.[e] The Vandals in Africa, a more furious race of plunderers, seized all the best lands.[f] The Lombards of Italy took a third part of the produce. We cannot discover any mention of a similar arrangement in the laws or history of

c De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes *pertractentur*. Tac. de Mor. Germ. c. xi. Acidalius and Grotius contend for *prætractentur:* which would be neater, but the same sense appears to be conveyed by the common reading.

d [Note I.]

e Leg. Burgund. c. 54, 55. Sir F. Palgrave has produced a passage from the Theodosian code, vii. 8, 5, which illustrates this use of the word *hospes*. It was given to the military quartered upon the inhabitants anywhere in the empire, and thus transferred by analogy to the barbarian occupants. It was needless, I should think, for him to prove that these acquisitions, "better considered as allodial laws," did not contain the germ of feudality. "There is no Gothic feudality unless the parties be connected by the mutual bond of vassalage and seigniory." Eng. Commonw. i. 500.

f Procopius de Bello Vandal., l. i. c. 5.

the Franks. It is, however, clear that they occupied, by public allotment of individual pillage, a great portion of the lands of France.*g*

The estates possessed by the Franks as their property were termed *allodial;* a word which is sometimes restricted to such as had descended by inheritance.*h* These were subject to no burden except that of public defence. They passed to all the children equally, or, in their failure, to the nearest kindred.*i* But of these allodial possessions there was a particular species, denominated Salic, from which females were expressly excluded. What these lands were, and what was the cause of the exclusion, has been much disputed. No solution seems more probable than that the ancient lawgivers of the Salian Franks prohibited females from inheriting the lands assigned to the nation upon its conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired by purchase or other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salic.*j* Hence, in the

g [Note II.]

h Allodial lands are commonly opposed to beneficiary or feudal, the former being strictly proprietary, while the latter depended upon a superior. In this sense the word is of continual recurrence in ancient histories, laws, and instruments. It sometimes, however, bears the sense of inheritance, and this seems to be its meaning in the famous 62d chapter of the Salic law; de Alodis. Alodium interdum opponitur comparato, says Du Cange, in formulis veteribus. Hence, in the charters of the eleventh century, hereditary fiefs are frequently termed alodia. Recueil des Historiens de France, t. xi. préface, Vaissette, Hist. de Languedoc, t. ii. p. 109.

Alodium has by many been derived from *All* and *odh*, property. (Du Cange, et alii.) But M. Guizot, with some positiveness, brings it from *loos*, lot; thus confining the word to lands acquired by lot on the conquest. But in the first place this assumes a regular partition to have been made by the Franks, which he, in another place, as has been seen, does not acknowledge; and secondly, *Alodium*, or, in its earlier form, *Alodis*, is used for all hereditary lands. (See Grimm, Deutsche Rechts Alterthümer, p. 492.) In the Orkneys, where feudal tenures were not introduced, the allodial proprietor is called an *udaller*, thus lending probability to the former derivation of *alod;* since it is only an inversion of the words *all* and *odh;* but it seems also to corroborate the notion of Luden, as it had been of Leibnitz, that the word *adel* or *ethel*, applied to designate the nobler class of Germans, had originally the same sense; it distinguished absolute or allodial property from that which, though belonging to freemen, was subject to some conditions of dependency. (Gesch. des Deutschen Volkes, vol. i. p. 719.)

The word *sors*, which seems to have misled several writers, when applied to land means only an integral patrimony, as it means capital opposed to interest when applied to money. It is common in the civil law, and is no more than the Greek κλῆρος; but it had been peculiarly applied to the lands assigned by the Romans to the soldiery after a conquest, which some suppose, I know not on what evidence, to have been by lot. (Du Cange, voc. Sors.) And hence this term was most probably adopted by the barbarians, or rather those who rendered their laws into Latin. If the Teutonic word *loos* was sometimes used for a *mansus* or manor, as M. Guizot informs us, it seems most probable that this was a literal translation of *sors*, bearing with it the secondary sense.

i Leg. Salicæ, c. 62.

j By the German customs, women, though treated with much respect and delicacy, were not endowed at their marriage. Dotem non uxor marito, sed maritus uxori confert. Tacitus, c. 18. A similar principle might debar them of inheritance in fixed possessions. Certain it is that the exclusion of fe-

Ripuary law, the code of a tribe of Franks settled upon the banks of the Rhine, and differing rather in words than in substance from the Salic law, which it serves to illustrate, it is said that a woman cannot inherit her grandfather's estate (hæreditas aviatica), distinguishing such family property from what the father might have acquired.[k] And Marculfus uses expressions to the same effect. There existed, however, a right of setting aside the law, and admitting females to succession by testament. It is rather probable, from some passages in the Burgundian code, that even the lands of partition (sortes Burgundionum) were not restricted to male heirs.[l] And the Visigoths admitted women on equal terms to the whole inheritance.[m]

A controversy has been maintained in France as to the condition of the Romans, or rather the provincial inhabitants of Gaul, after the invasion of Clovis. But neither those who have considered the Franks as barbarian conquerors, enslaving the

males was not unfrequent among the Teutonic nations. We find it in the laws of the Thuringians and of the Saxons; both ancient codes, though not free from interpolation. Leibnitz, Scriptores Rerum Brunswicensium, t. i. pp. 81 and 83. But this usage was repugnant to the principles of Roman law, which the Franks found prevailing in their new country, and to the natural feeling which leads a man to prefer his own descendants to collateral heirs. One of the precedents in Marculfus (l. ii. form. 12) calls the exclusion of females, diuturna et impia consuetudo. In another a father addresses his daughter: Omnibus non habetur incognitum, quod, sicut lex Salica continet, de rebus meis, *quod mihi ex alode parentum meorum obvenit*, apud germanos tuos filios meos minime in hæreditate succedere poteras. Formulæ Marculfo adjectæ, 49. These precedents are supposed to have been compiled about the latter end of the seventh century.

The opinion expressed in the text, that the *terra Salica*, which females could not inherit, was the land acquired by the barbarians on their first conquest, is confirmed by Sismondi (i. 196) and by Guizot (Essais sur l'Hist. de France, p. 94). M. Guerard, however, the learned editor of the chartulary of Chartres (Documens Inédits, 1840, p. 22), is persuaded that Salic land was that of the domain, from *sala*, the hall or principal residence, as opposed to the portion of the estate which was occupied by tenants, beneficiary or servile. This, he says, he has proved in another work, which I have not seen. Till I have done so, much doubt remains to me as to this explanation. Montesquieu had already started the same theory, which Guizot justly, as it seems, calls "incomplète et hypothétique." Besides other objections, it seems not to explain the manifest identity between the *terra Salica* and the *hæreditas aviatica* of the Ripuarian law, or the *alodis parentum* of Marculfus. I ought, however, to mention a remark of Grimm, that, throughout the Frank domination, German countries made use of the words *terra Salica*. In them it could not mean lands of partition or assignment, but mere *alodia*. And he thinks that it may, in most cases, be interpreted of the *terra dominicalis*. (Deutsche Rechts Alterthümer, p. 493.)

M. Fauriel maintains (Hist. de la Gaule Méridion. ii. 18) that the Salic lands were beneficiary, as opposed to the allodial. But the "hæreditas aviatica" is repugnant to this. Marculfus distinctly opposes *alodia* to *comparata*, and limits the exclusion of daughters to the former. According to one of the most recent inquirers, "terra Salica" was all the land held by a Salian Frank (Lehuerou i. 86). But the same objections apply to this solution; in addition to which it may be said that the whole Salic law relates to that people, while "terra Salica" is plainly descriptive of a peculiar character of lands.

k C. 56.

l I had in former editions asserted the contrary of this, on the authority of Leg. Burgund. c. 78, which seemed to limit the succession of estates, called *sortes*, to male heirs. But the expressions are too obscure to warrant this inference; and M. Guizot (Essais sur l'Hist. de France, vol. i. p. 95) refers to the 14th chapter of the same code for the opposite proposition. But this, too, is not absolutely clear, as a general rule.

m [Note III.]

former possessors, nor the Abbé Dubos, in whose theory they appear as allies and friendly inmates, are warranted by historical facts, though more approximation to the truth may be found in the latter hypothesis. On the one hand, we find the Romans not only possessed of property, and governed by their own laws, but admitted to the royal favor and the highest offices;[n] while the bishop and clergy, who were generally of that nation,[o] grew up continually in popular estimation, in riches, and in temporal sway. Yet it is undeniable that a marked line was drawn at the outset between the conquerors and the conquered. Though one class of Romans retained estates of their own, yet there was another, called tributary, who seem to have cultivated those of the Franks, and were scarcely raised above the condition of predial servitude. But no distinction can be more unequivocal than that which was established between the two nations, in the *weregild*, or composition for homicide. Capital punishment for murder was contrary to the spirit of the Franks, who, like most barbarous nations, would have thought the loss of one citizen ill-repaired by that of another. The *weregild* was paid to the relations of the slain, according to a legal rate. This was fixed by the Salic law at six

n Daniel conjectures that Clotaire I. was the first who admitted Romans into the army, which had previously been composed of Franks. From this time we find many in high military command. (Hist. de la Milice Françoise, t. i. p. 11.) It seems by a passage in Gregory of Tours, quoted by Dubos (t. iii. p. 547), that some Romans affected the barbarian character by letting their hair grow. If this were generally permitted, it would be a stronger evidence of approximation between the two races than any that Dubos has adduced. Montesquieu certainly takes it for granted that a Roman might change his law, and thus become to all material intents a Frank. (Esprit des Loix, l. xxviii. c. 4.) But the passage on which he relies is read differently in the manuscripts. [Note IV.]

o The barbarians by degrees got hold of bishoprics. In a list of thirty-four bishops or priests, present at a council in 506, says M. Fauriel (.ii. 459), the names are all Roman or Greek. This was at Agde, in the dominion of the Visigoths. In 511 a council at Orleans exhibits one German name. But at the fifth council of Paris, in 577, where forty-five bishops attended, the Romans are indeed much the more numerous, but mingled with barbaric names, six of whom M. Thierry mentions. (Récits des Temps Mérovingiens, vol. ii. p. 183.) In 585, at Macon, out of sixty-three names but six are German. Fauriel asserts that, in a diploma of Clovis II. dated 653, there are but five Roman names out of forty-five witnesses; and hence he infers that, by this time, the Franks had seized on the Church as their spoil, filling it with barbarian prelates. But on reference to Rec. des Hist. (iv. 636), I find but four of the witnesses to this instrument qualified as *episcopus:* and of these two have Roman names. The majority may have been laymen for any evidence which the diploma presents. In one, however, of Clovis III., dated 693 (id. p. 672), I find, among twelve bishops only three names which appear Roman. We cannot always judge by the modernization of a proper name. St. Leger sounds well enough; but in his Life we find a "Beatus Leodegarius ex progenie celsa Francorum ac nobilissima exortus." Greek names are exceedingly common among the bishops; but these cannot mislead an attentive reader.

This inroad of Franks into the Church probably accelerated the utter prostration of intellectual power, at least in its literary manifestation, which throws so dark a shade over the seventh century. And it still more unquestionably tended to the secular, the irregular, the warlike character of the higher clergy in France and Germany for many following centuries. Some of these bishops, according to Gregory of Tours, were profligate barbarians.

hundred solidi for an Antrustion of the king; at three hundred for a Roman *conviva regis* (meaning a man of sufficient rank to be admitted to the royal table);[p] at two hundred for a common Frank; at one hundred for a Roman possessor of lands; and at forty-five for a tributary, or cultivator of another's property. In Burgundy, where religion and length of settlement had introduced different ideas, murder was punished with death. But other personal injuries were compensated, as among the Franks, by a fine, graduated according to the rank and nation of the aggrieved party.[q]

The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire. Adhering in general to their ancient customs, without desire of improvement, they left the former inhabitants in unmolested enjoyment of their civil institutions. The Frank was judged by the Salic or the Ripuary code; the Gaul followed that of Theodosius.[r] This grand distinction of Roman and barbarian, according to the law which each followed, was common to the Frank, Burgundian, and Lombard kingdoms. But the Ostrogoths, whose settlement in the empire and advance in civility of manners were earlier, inclined to desert their old usages, and adopt the Roman jurisprudence.[s] The laws of the Visigoths, too, were compiled by bishops upon a Roman foundation, and designed as an uniform code, by which both nations should be governed.[t] The name of Gaul or Roman was not

[p] This phrase was borrowed from the Romans. The Theodosian code speaks of those qui divinis epulis adhibentur, et adorandi principes facultatem antiquitus meruerunt. Garnier, Origine du Gouvernement Français (in Leber's Collection des Meilleures Dissertations relatives à l'Histoire de France, 1838, vol. v. p. 187). This memoir by Garnier, which obtained a prize from the Academy of Inscriptions in 1761, is a learned disquisition on the relation between the Frank monarchy and the usages of the Roman empire; inclining considerably to the school of Dubos. I only read it in 1851: it puts some things in a just light; yet the impression which it leaves is that of one-sidedness. The author does not account for the continued distinction between the Franks and Romans, testified by the language of history and of law. Garnier never once alludes to the most striking circumstance, the inequality of composition for homicide.

To return to the words conviva regis, it seems not probable that they should be limited to those who actually had feasted at the royal table; they naturally include the senatorial families, one of whom would receive that honor if he should present himself at court.

[q] Leges Salicæ, c. 43; Leges Burgundionum, tit. 2. Murder and robbery were made capital by Childebert, King of Paris; but *Francus* was to be sent for trial in the royal court, *debilior persona in loco pendatur.* Baluz, t. i. p. 17. I am inclined to think that the word *Francus* does not absolutely refer to the nation of the party, but rather to his rank, as opposed to *debilior persona;* and consequently, that it had already acquired the sense of freeman or free-born (ingenuus), which is perhaps its strict meaning. Du Cange, voc. Francus. quotes the passage in this sense. [Note IV.]

[r] Inter Romanos negotia causarum Romanis Legibus præcipimus terminari. Edict. Clotair. 1. circ. 560. Baluz. Capitul. t. i. p. 7.

[s] Giannone, l. iii. c. 2.

[t] Hist. de Languedoc, t. i. p. 242. Heineccius, Hist. Juris German. c. i. s. 15.

entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne.[u] Ultimately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France. But in the south, from whatever cause, it survived the revolutions of the middle ages; and thus arose a leading division of that kingdom into *pays coutumiers* and *pays du droit écrit;* the former regulated by a vast variety of ancient usages, the latter by the civil law.[v]

The kingdom of Clovis was divided into a number of districts, each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans.[w] The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquillity, to collect the royal revenues, and to lead, when required, the free proprietors into the field.[x] The title of a duke implied a higher dignity, and commonly gave authority over several counties.[y] These offices

u Suger, in his Life of Louis VI., uses the expression, lex Salica (Recueil des Historiens, t. xii. p. 24); and I have some recollection of having met with the like words in other writings of as modern a date. But I am not convinced that the original Salic code was meant by this phrase, which may have been applied to the local feudal customs. The capitularies of Charlemagne are frequently termed lex Salica. Many of these are copied from the Theodosian code.

v This division is very ancient, being found in the edict of Pistes, under Charles the Bald, in 864; where we read, in illis regionibus, quæ legem Romanam sequuntur. (Recueil des Historiens, t. vii. p. 664.) Montesquieu thinks that the Roman law fell into disuse in the north of France on account of the superior advantages, particularly in point of composition for offences, annexed to the Salic law; while that of the Visigoths being more equal, the Romans under their government had no inducement to quit their own code. (Esprit des Loix, l. xxviii. c. 4.) But it does not appear that the Visigoths had any peculiar code of laws till after their expulsion from the kingdom of Toulouse. They then retained only a small strip of territory in France, about Narbonne and Montpellier.

However, the distinction of men according to their laws was preserved for many centuries, both in France and Italy. A judicial proceeding of the year 918, published by the historians of Languedoc (t. ii. Appendix, p. 56), proves that the Roman, Gothic, and Salic codes were then kept perfectly separate, and that there were distinct judges for the three nations. The Gothic law is referred to as an existing authority in a charter of 1070. Idem, t. iii. p. 274; De Marca, Marca Hispanica, p. 1159. Women in Italy upon marriage usually changed their law and adopted that of their husband, returning to their own in widowhood; but to this there are exceptions. Charters are found as late as the twelfth century with the expression, qui professus sum lege Longobardicâ [aut] lege Salicâ [aut] lege Alemannorum vivere. But soon afterwards the distinctions were entirely lost, partly through the prevalence of the Roman law, and partly through the multitude of local statutes in the Italian cities. Muratori, Antiquitates Italiæ Dissertat. 22; Du Cange, v. Lex. Heineccius, Historia Juris Germanici, c. ii. s. 51. [Note V.]

w The word *graf* was not always equivalent to *comes;* it took in some countries, as in England, the form *gerefa,* and stood for the *vicecomes* or sheriff, the count or alderman's deputy. Some have derived it from *grau,* on the hypothesis that the elders presided in the German assemblies.

x Marculfi Formulæ, l. i. 32.

y Houard, the learned translator of

were originally conferred during pleasure; but the claim of a son to succeed his father would often be found too plausible or too formidable to be rejected, and it is highly probable that, even under the Merovingian kings, these provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe.[z] The Lombard dukes, those especially of Spoleto and Benevento, acquired very early an hereditary right of governing their provinces, and that kingdom became a sort of federal aristocracy.[a]

The throne of France was always filled by the royal house of Meroveus. However complete we may imagine the elective rights of the Franks, it is clear that a fundamental law restrained them to this family. Such, indeed, had been the monarchy of their ancestors the Germans; such long continued to be those of Spain, of England, and perhaps of all European

Littleton (Anciens Loix des François, t. i. p. 6), supposes these titles to have been applied indifferently. But the contrary is easily proved, and especially by a line of Fortunatus, quoted by Du Cange and others.

Qui modo dat Comitis, det tibi jura Ducis.

The cause of M. Houard's error may perhaps be worth noticing. In the above-cited form of Marculfus, a precedent (in law language) is given for the appointment of a duke, count, or patrician. The material part being the same, it was only necessary to fill up the blanks, as we should call it, by inserting the proper designation of office. It is expressed, therefore, actionem *comitatus, ducatus, aut patriciatus,* in *pago illo,* quam *antecessor tuus ille* usque nunc visus est egisse, tibi agendum regendumque commissimus. Montesquieu has fallen into a similar mistake (l. xxx. c. 16), forgetting for a moment, like Houard, that these instruments in Marculfus were not records of real transactions, but general forms for future occasion.

The office of patrician is rather more obscure. It seems to have nearly corresponded with what was afterwards called mayor of the palace, and to have implied the command of all the royal forces. Such at least were Celsus and his successor Mummolus under Gontran. This is probable too from analogy. The patrician was the highest officer in the Roman empire from the time of Constantine, and we know how much the Franks themselves, and still more their Gaulish subjects, affected to imitate the style of the imperial court.

This office was, as far as I recollect, confined to the kingdom of Burgundy; but the Franks of this kingdom may have borrowed it from the Burgundians, as the latter did from the empire. Marculfus gives a form for the grant of the office of patrician, which seems to have differed only in local extent of authority from that of a duke or a count, which was the least of the three; as the same formula expressing their functions is sufficient for all.

z That the offices of count and duke were originally but temporary may be inferred from several passages in Gregory of Tours; as l. v. c. 37, l. viii. c. 18. But it seems by the laws of the Alemanni, c. 35, that the hereditary succession of their dukes was tolerably established at the beginning of the seventh century, when their code was promulgated. The Bavarians chose their own dukes out of one family, as is declared in their laws; tit. ii. c. 1, and c. 20. (Lindebrog, Codex Legum Antiquarum.) This the Emperor Henry II. confirms: Nonne scitis (he says), Bajuarios ab initio ducem eligendi liberam habere potestatem? (Ditmar, apud Schmidt, Hist. des Allemands, t. ii. p. 404.) Indeed the consent of these German provincial nations, if I may use the expression, seems to have been always required, as in an independent monarchy. Ditmar, a chronicler of the tenth century, says that Eckard was made Duke of Thoringia totius populi consensu Pfeffel, Abrégé Chronologique, t. i. p. 184. With respect to France, properly so called, or the kingdoms of Neustria and Burgundy, it may be less easy to prove the existence of hereditary offices under the Merovingians. But the feebleness of their government makes it probable that so natural a system of disorganization had not failed to ensue. The Helvetian counts appear to have been nearly independent as early as this period. (Planta's Hist. of the Helvetic Confederacy, chap. i.)

a Giannone, l. iv. [Note VI.]

nations. The reigning family was immutable; but at every vacancy the heir awaited the confirmation of a popular election, whether that were a substantial privilege or a mere ceremony. Exceptions, however, to the lineal succession are rare in the history of any country, unless where an infant heir was thought unfit to rule a nation of freemen. But, in fact, it is vain to expect a system of constitutional laws rigidly observed in ages of anarchy and ignorance. Those antiquaries who have maintained the most opposite theories upon such points are seldom in want of particular instances to support their respective conclusions.*b*

Clovis was a leader of barbarians, who respected his valor and the rank which they had given him, but were incapable of servile feelings, and jealous of their common as well as individual rights. In order to appreciate the power which he possessed, it has been customary with French writers to bring forward the well-known story of the vase of Soissons. When the plunder taken in Clovis's invasion of Gaul was set out in this place for distribution, he begged for himself a precious vessel belonging to the church of Rheims. The army having expressed their willingness to consent, "You shall have nothing here," exclaimed a soldier, striking it with his battle-axe, "but what falls to your share by lot." Clovis took the

b Hottoman (Franco-Gallia, c. vi.) and Boulainvilliers (Etat de la France) seem to consider the crown as absolutely elective. The Abbé Vertot (Mémoires de l'Acad. des Inscriptions, t. iv.) maintains a limited right of election within the reigning family. M. de Foncemagne (t. i. and t. viii. of the same collection) asserts a strict hereditary descent. Neither perhaps sufficiently distinguishes acts of violence from those of right, nor observes the changes in the French constitution between Clovis and Childeric III.

It would now be admitted by the majority of French antiquaries, that the nearest heir would not have a strict right to the throne; but if he were of full age and in lineal descent, his expectation would be such as to constitute a moral claim never to be defeated or contested, provided no impediment, such as his minority or weakness of mind, stood in the way. After the middle of the seventh century the mayors of the palace selected whom they would. As it is still clearer from history that the Carlovingian kings did not assume the crown without an election, we may more probably suppose this to have been the ancient constitution. The passages in Gregory of Tours which look like a mere hereditary succession, such as, *Quatuor filii regnum accipiunt et inter se æquâ lance dividunt*, do not exclude a popular election, which he would consider a mere formality, and which in that case must have been little more.

I must admit, however, that M. Guizot, whose authority is deservedly so high, gives more weight to lineal inheritance than many others have done; and consequently treats the phrases of historians seeming to imply a choice by the people as merely recognitions of a legal right.

"The principle of hereditary right," he says, "must have been deeply implanted when Pepin was forced to obtain the pope's sanction before he ventured to depose the Merovingian prince, obscure and despised as he was." (Essais sur l'Hist. de France, p. 298.) But surely this is not to the point. Childeric III. was a reigning king; and, besides this, the question is by no means as to the right of the Merovingian family to the throne, which no one disputes, but as to that of the nearest heir. The case was the same with the second dynasty. The Franks bound themselves to the family of Pepin, not to any one heir within it.

vessel without marking any resentment, but found an opportunity, next year, of revenging himself by the death of the soldier. The whole behavior of Clovis appears to be that of a barbarian chief, not daring to withdraw anything from the rapacity, or to chastise the rudeness, of his followers.

But if such was the liberty of the Franks when they first became conquerors of Gaul, we have good reason to believe that they did not long preserve it. A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to or seized by them. It became a burden to attend those general assemblies of the nation which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength. After some time it appears that these meetings drew together only the bishops, and those invested with civil offices.[c] The ancient inhabitants of Gaul, having little notion of political liberty, were unlikely to resist the most tyrannical conduct. Many of them became officers of state, and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany. We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis.[d] Yet it is probable that some of the Franks were themselves instrumental in this change of their government. The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus; men forming a distinct and elevated class in the state, and known by the titles of Fideles, Leudes, and Antrustiones. They took an oath of fidelity to the king, upon their admission into that rank, and were commonly remunerated with gifts of land. Under different appellations we find, as some antiquaries think, this class of courtiers in the early records of Lombardy and England. The general name of Vassals (from *Gwas*, a Celtic word for a servant) is applied to them in every country.[e] By the assistance of these

c Dubos, t. iii. p. 327; Mably, Observ. sur l'Histoire de France, l. i. c. 3.

d Gregory of Tours, throughout his history, talks of the royal power in the tone of Louis XIV.'s court. If we were obliged to believe all we read, even the vase of Soissons would bear witness to the obedience of the Franks.

e The Gasindi of Italy and the Anglo-Saxon royal Thane appear to correspond, more or less, to the Antrustions of France. The word Thane, however, as will be seen in another chapter, was used in a very extensive sense, and comprehended all free proprietors of land. That of *Leudes* seems to imply only subjection, and is frequently applied to the whole body of a nation,

faithful supporters, it has been thought that the regal authority of Clovis's successors was insured.*f* However this may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice, but in such general tyranny as is incompatible with the existence of any real checks upon the sovereign.*g*

But before the middle of the seventh century the kings of this line had fallen into that contemptible state which has been described in the preceding book. The mayors of the palace, who from mere officers of the court had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors and considerable proprietors of land.*h* Some inequality there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy which became the most striking feature in the political system of Europe, during many centuries, and is, in fact, its great distinction, both from the despotism of Asia and the equality of republican governments.

There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better

as well as, in a stricter sense, to the king's personal vassals. This name they did not acquire, originally, by possessing benefices; but rather, by being vassals or servants, became the object of beneficiary donations. In one of Marculfus's precedents, l. i. f. 18, we have the form by which an Antrustion was created. See Du Cange, under these several words, and Muratori's thirteenth dissertation on Italian Antiquities. The Gardingi sometimes mentioned in the laws of the Visigoths do not appear to be of the same description.

f Boantus . . . vallatus in domo sua, ab hominibus regis interfectus est. Greg. Tur. l. viii. c. 11. A few spirited retainers were sufficient to execute the mandates of arbitrary power among a barbarous, disunited people.

g This is more fully discussed in Note VII.

h The revolution which ruined Brunehaut was brought about by the defection of her chief nobles, especially Warnachar, mayor of Austrasia. Upon Clotaire II.'s victory over her he was compelled to reward these adherents at the expense of the monarchy. Warnachar was made mayor of Burgundy, with an oath from the king never to dispossess him (Fredegarius, c. 42.) In 626 the nobility of Burgundy declined to elect a mayor, which seems to have been considered as their right. From this time nothing was done without the consent of the aristocracy. Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the one a Roman bishop, the other a Frank or Burgundian, the government was altogether changed.

It might even be surmised that the crown was considered as more elective than before. The author of Gesta Regum Francorum, an old chronicler who lived in those times, changes his form of expressing a king's accession from that of Clotaire II. Of the earlier kings he says only, regnum recepit. But of Clotaire, Franci quoque prædictum Clotairium regem parvulum supra se in regnum statuerunt. Again, of the accession of Dagobert I.: Austrasii Franci superiores, congregati in unum, Dagobertum supra se in regnum statuunt. In another place, Decedente præfato rege Clodoveo, Franci Clotairium seniorem puerum ex tribus sibi regem statuerunt. Several other instances might be quoted.

understood, by fixing our conception of the term. In our modern acceptation it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and consequently not transferable like those which property confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman empire. They felt, no doubt, the common prejudice of mankind in favor of those whose ancestry is conspicuous, when compared with persons of obscure birth. This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights. Those who are acquainted with the constitution of the Roman republic will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles*. Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations (else the beginnings of the greatest houses would not have been so enveloped in doubt as we find them), there are abundant traces of the respect in which families of known antiquity were held among them.[i]

But the essential distinction of ranks in France, perhaps also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment. The aristocracy of wealth preceded that of birth, which indeed is still chiefly dependent upon the other for its importance. A Frank of large estate was styled a noble; if he wasted or was despoiled of his wealth, his descendants fell into the mass of the people, and the new possessor became noble in his stead. Families were noble by descent, because they were rich by the same means. Wealth gave them power, and power gave them pre-eminence. But no distinction was made by the Salic or Lombard codes in the composition for homicide, the great test of political station, except in favor of the king's vassals. It seems, however, by some of the barbaric codes, those namely of the Burgundians,

[i] The antiquity of French nobility is maintained temperately by Schmidt, Hist. des Allemands, t. i. p. 361, and with acrimony by Montesquieu, Esprit des Loix, l. xxx. c. 25. Neither of them proves any more than I have admitted. The expression of Ludovicus Pius to his freedman, Rex fecit te liberum, non nobilem; quod impossibile est post libertatem, is very intelligible, without imagining a privileged class. Of the practical regard paid to birth, indeed, there are many proofs. It seems to have been a recommendation in the choice of bishops. (Marculfi Formulæ, l. i. c. 4, cum notis Bignonii, in Baluzii Capitularibus.) It was probably much considered in conferring dignities. Fredegarius says of Protadius, mayor of the palace to Brunehaut, Quoscunque genere nobiles reperiebat, totos humiliare conabatur, ut nullus reperiretur, qui gradum, quem arripuerat, potuisset assumens. [Note VIII.]

Visigoths, Saxons, and the English colony of the latter nation,[j] that the freemen were ranged by them into two or three classes, and a difference made in the price at which their lives were valued: so that there certainly existed the elements of aristocratic privileges, if we cannot in strictness admit their completion at so early a period. The Antrustions of the kings of the Franks were also noble, and a composition was paid for their murder, treble of that for an ordinary citizen; but this was a personal, not an hereditary distinction. A link was wanting to connect their eminent privileges with their posterity; and this link was to be supplied by hereditary benefices.

Besides the lands distributed among the nations, others were reserved to the crown, partly for the support of its dignity, and partly for the exercise of its munificence. These are called fiscal lands; they were dispersed over different parts of the kingdom, and formed the most regular source of revenue.[k] But the greater portion of them were granted out to favored subjects, under the name of benefices, the nature of which is one of the most important points in the policy of these ages. Benefices were, it is probable, most frequently bestowed upon the professed courtiers, the Antrustiones or Leudes, and upon the provincial governors. It by no means appears that any conditions of military service were expressly annexed to these grants: but it may justly be presumed that such favors were not conferred without an expectation of some return; and we read both in law and history that beneficiary tenants were more closely connected with the crown than mere allodial proprietors. Whoever possessed a benefice was expected to serve his sovereign in the field. But of allodial proprietors only the owner of three mansi was called upon for personal service. Where there were three possessors of single mansi, one went to the army, and the others contributed to his equipment.[l] Such at least were the regulations of Charlemagne, whom I cannot believe, with Mably, to have relaxed the obligations of

j Leg. Burgund. tit. 26; Leg. Visigoth, l. ii. t. 2, c. 4 (in Lindebrog.); Du Cange, voc. Adalingus, nobilis; Wilkins, Leg. Ang. Sax. passim.

k The demesne lands of the crown are continually mentioned in the early writers; the kings, in journeying to different parts of their dominions, took up their abode in them. Charlemagne is very full in his directions as to their management. Capitularia, A.D. 797, et alibi.

l Capitul. Car. Mag. ann. 807 and 812. I cannot define the precise area of a mansus. It consisted, according to Du Cange, of twelve jugera; but what he meant by a juger I know not. The ancient Roman juger was about five-eighths of an acre; the Parisian arpent was a fourth more than one. This would make a difference as two to one.

military attendance. After the peace of Coblentz, in 860, Charles the Bald restored all allodial property belonging to his subjects who had taken part against him, but not his own beneficiary grants, which they were considered as having forfeited.

Most of those who have written upon the feudal system lay it down that benefices were originally precarious and revoked at pleasure by the sovereign; that they were afterwards granted for life; and at a subsequent period became hereditary. No satisfactory proof, however, appears to have been brought of the first stage in this progress.[m] At least, I am not convinced that beneficiary grants were ever considered as resumable at pleasure, unless where some delinquency could be imputed to the vassal. It is possible, though I am not aware of any documents which prove it, that benefices may in some instances have been granted for a term of years, since even fiefs in much later times were occasionally of no greater extent. Their ordinary duration, however, was at least the life of the possessor, after which they reverted to the fisc.[n] Nor can I agree with those who deny the existence of hereditary benefices under the first race of French kings. The codes of the Burgundians, and of the Visigoths, which advert to them, are, by analogy, witnesses to the contrary.[o] The precedents given in the forms of Marculfus (about 660) for the grant of a benefice, contain very full terms, extending it to the heirs of the beneficiary.[p] And Mably has plausibly inferred the perpetuity of benefices, at least in some instances, from the language of the treaty at Andely in 587, and of an edict of Clotaire II. some years later.[q]

m [Note IX.]

n The following passage from Gregory of Tours seems to prove that, although sons were occasionally permitted to succeed their fathers, an indulgence which easily grew up into a right, the crown had, in his time, an unquestionable reversion after the death of its original beneficiary. Hoc tempore et Wandelinus, nutritor Childeberti regis obiit; sed in locum ejus nullus est subrogatus, eo quod regina mater curam velit propriam habere de filio. *Quæcunque de fisco merint, fisci juribus sunt relata.* Obiit his diebus Bodegesilus dux plenus dierum; sed nihil de facultate ejus filiis minutum est. l. viii. c. 22. Gregory's work, however, does not go farther than 595.

o Leges Burgundiorum, tit. i.; Leges Visigoth. l. v. tit. 2.

p Marculf. form. xii. and xiv. l. i. This precedent was in use down to the eleventh century; its expressions recur in almost every charter. The earliest instance I have seen of an actual grant to a private person is of Charlemagne to one John, in 795. Baluzii Capitularia, t. ii. p. 1400.

q Quicquid antefati reges ecclesiis aut fidelibus suis contulerunt, aut adhuc conferre cum justitiâ Deo propitiante voluerint, stabiliter conservetur; et quicquid unicuique fidelium in utriusque regno per legem et justitiam redhibetur, nullum ei prejudicium ponatur, sed liceat res debitas possidere atque recipere. Et si aliquid unicuique per interregna sine culpâ sublatum est, audentiâ habitâ restauretur. Et de eo quod per munificentias præcedentium regum unusquisque usque ad transitum gloriosæ memoriæ domini Chlothacharii regis possedit, cum securitate possideat; et quod exinde fidelibus personis ablatum est, de præsenti recipiat. Fœdus Andeliacum, in Gregor. Turon. l. iv. c. 20.

Quæcunque ecclesiæ vel chericis vel quibuslibet personis a gloriosæ me-

We can hardly doubt at least that children would put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property.

A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure. Abundant proofs of this custom, best known by the name of subinfeudation, occur even in the capitularies of Pepin and Charlemagne. At a later period it became universal; and what had begun perhaps through ambition or pride was at last dictated by necessity. In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependency upon men whom they attached by gratitude, and bound by strong conditions. The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals. To render military service became the essential obligation which the tenant of a benefice undertook; and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures.[r]

This revolution was accompanied by another still more important. The provincial governors, the dukes and counts, to whom we may add the marquises or margraves intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings. Charlemagne, duly jealous of their ascendency, checked it by suffering the duchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and, if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility. Even in his time, the faults of the counts are the constant theme of the capitularies; their dissipation and neglect of duty, their oppression of the poorer proprietors, and their artful attempts to appropriate the crown lands situated within their territory.[s] If Charlemagne was unable to redress those

moriæ præfatis principibus munificentiæ largitate collatæ sunt, omni firmitate perdurent. Edict. Chlotachar I. vel potius II. in Recueil des Historiens, t. iv. p. 116.

[r] [Note X.]

[s] Capitularia Car. Mag. et Lud. Pii. passim; Schmidt, Hist. des Allemands, t. ii. p. 158; Gaillard, Vie de Charlem. t. iii. p. 118.

evils, how much must they have increased under his posterity! That great prince seldom gave more than one county to the same person; and as they were generally of moderate size, co-extensive with episcopal dioceses, there was less danger, if this policy had been followed, of their becoming independent.[t] But Louis the Debonair, and, in a still greater degree, Charles the Bald, allowed several counties to be enjoyed by the same person. The possessors constantly aimed at acquiring private estates within the limits of their charge, and thus both rendered themselves formidable, and assumed a kind of patrimonial right to their dignities. By a capitulary of Charles the Bald, A.D. 877, the succession of a son to the father's county appears to be recognized as a known usage.[u] In the next century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king.[v] They now added the name of the county to their own, and their wives took the appellation of countess.[w] In Italy the independence of the dukes was still more complete; and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire, throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor.

Meanwhile, the allodial proprietors, who had hitherto formed the strength of the state, fell into a much worse condition. They were exposed to the rapacity of the counts, who, whether as magistrates and governors or as overbearing lords, had it always in their power to harass them. Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castles and fastnesses, which, in the tenth century, under pretense of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine the military compact of lord

t Vaissette, Hist. de Languedoc, t. i. pp. 587, 700, and not. 87.

u Baluzii Capitularia, t. ii. pp. 263, 269. This is a questionable point, and most French antiquaries consider this famous capitulary as the foundation of an hereditary right in counties. I am inclined to think that there was at least a practice of succession which is implied and guaranteed by this provision. [Note VI.]

v It appears, by the record of a process in 918, that the Counts of Toulouse had already so far usurped the rights of their sovereign as to claim an estate on the ground of its being a royal benefice. Hist. de Languedoc, t. ii. Appen. p. 56.

w Vaissette, Hist. de Languedoc, t. i. p. 588, and infrà, t. ii. pp. 38, 109, and Appendix, p. 56.

and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated allodialist had no support; his fortunes were strangely changed since he claimed, at least in right, a share in the legislation of his country, and could compare with pride his patrimonial fields with the temporary benefices of the crown. Without law to redress his injuries, without the royal power to support his right, he had no course left but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. During the tenth and eleventh centuries it appears that allodial lands in France had chiefly become feudal: that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions; or more frequently, perhaps, the owner had been compelled to acknowledge himself the man or vassal of a suzerain, and thus to confess an original grant which had never existed.*x* Changes of the same nature, though not perhaps so extensive, or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert that the prevalence of the feudal system has been unlimited; in a great part of France allodial tenures always subsisted; and many estates in the empire were of the same description.*y*

There are, however, vestiges of a very universal custom distinguishable from the feudal tenure of land, though so analogous to it that it seems to have nearly escaped the notice of antiquaries. From this silence of other writers, and the great obscurity of the subject, I am almost afraid to notice what several passages in ancient laws and instruments concur to

x Hist. de Languedoc, t. ii. p. 109. It must be confessed that there do not occur so many specific instances of this conversion of allodial tenure into feudal as might be expected, in order to warrant the supposition in the text. Several records, however, are quoted by Robertson, Hist. Charles V., note 8; and others may be found in diplomatic collections. A precedent for surrendering allodial property to the king, and receiving it back as his benefice, appears even in Marculfus, l. i. form 13. The county of Cominges, between the Pyrenees, Toulouse, and Bigorre, was allodial till 1244, when it was put under the feudal protection of the Count of Toulouse. It devolved by escheat to the crown in 1443. Villaret, t. xv. p. 346.

In many early charters the king confirms the possession even of allodial property for greater security in lawless times; and, on the other hand, in those of the tenth and eleventh centuries, the word allodium is continually used for a feud, or hereditary benefice, which renders this subject still more obscure.

y The maxim, Nulle terre sans seigneur, was so far from being universally received in France, that in almost all southern provinces, or pays du droit écrit, lands were presumed to be allodial, unless the contrary was shown, or, as it was called, franc-aleux sans titre. The parliaments, however, seem latterly to have inclined against this presumption, and have thrown the burden of proof on the party claiming allodiality. For this see Denisart, Dictionnaire des Décisions, art. Franc-aleu. [Note XI.]

In Germany, according to Du Cange voc. Baro, there was a distinction between Barones and Semper-Barones; the latter holding their lands allodially.

prove, that, besides the relation established between lord and vassal by beneficiary grants, there was another species more personal, and more closely resembling that of patron and client in the Roman republic. This was usually called commendation; and appears to have been founded on two very general principles, both of which the distracted state of society inculcated. The weak needed the protection of the powerful; and the government needed some security for public order. Even before the invasion of the Franks, Salvian, a writer of the fifth century, mentions the custom of obtaining the protection of the great by money, and blames their rapacity, though he allows the natural reasonableness of the practice.[z] The disadvantageous condition of the less powerful freemen, which ended in the servitude of one part, and in the feudal vassalage of another, led such as fortunately still preserved their allodial property to insure its defence by a stipulated payment of money. Such payments, called Salvamenta, may be traced in extant charters, chiefly indeed of monasteries.[a] In the case of private persons it may be presumed that this voluntary contract was frequently changed by the stronger party into a perfect feudal dependence. From this, however, as I imagine, it probably differed, in being capable of dissolution at the inferior's pleasure, without incurring a forfeiture, as well as in having no relation to land. Homage, however, seems to have been incident to commendation, as well as to vassalage. Military service was sometimes the condition of this engagement. It was the law of France, so late at least as the commencement of the third race of kings, that no man could take a part in private wars, except in defence of his own lord. This we learn from an historian about the end of the tenth century, who relates that one Erminfrid, having been released from his homage to Count Burchard, on ceding the fief he had held of him to a monastery, renewed the ceremony on a war breaking out between Burchard and another nobleman, wherein he was desirous to give assistance; since, the author observes, it is not, nor has been, the practice in France, for any man to be concerned in war, except in the presence or by the command of his lord.[b] Indeed, there is reason to infer, from the capitularies of Charles the Bald, that every man was bound to attach himself to some

[z] Du Cange, v. Salvamentum.
[a] Ibid.
[b] Recueil des Historiens, tome x. p. 355.

lord, though it was the privilege of a freeman to choose his own superior.[c] And this is strongly supported by the analogy of our Anglo-Saxon laws, where it is frequently repeated that no man should continue without a lord. There are, too, as it seems to me, a great number of passages in Domesday-book which confirm this distinction between personal commendation and the beneficiary tenure of land. Perhaps I may be thought to dwell too prolixly on this obscure custom; but as it tends to illustrate those mutual relations of lord and vassal which supplied the place of regular government in the polity of Europe, and has seldom or never been explicitly noticed, its introduction seemed not improper.

It has been sometimes said that feuds were first rendered hereditary in Germany by Conrad II., surnamed the Salic. This opinion is perhaps erroneous. But there is a famous edict of that emperor at Milan, in the year 1037 (which, though immediately relating only to Lombardy, marks the full maturity of the system, and the last stage of its progress.[d] I have remarked already the custom of subinfeudation, or grants of lands by vassals to be held of themselves, which had grown up with the growth of these tenures. There had occurred, however, some disagreement, for want of settled usage, between these inferior vassals and their immediate lords, which this edict was expressly designed to remove. Four regulations of great importance are established therein: that no man should

c Unusquisque liber homo post mortem domini sui, licentiam habeat se commendandi inter hæc tria regna ad quemcunque voluerit. Similiter et ille qui nondum alicui commendatus est. Baluzii Capitularia, t. i. p. 443. A.D. 806. Volumus etiam ut unusquisque liber homo in nostro regno seniorem qualem voluerit in nobis et in nostris fidelibus recipiat. Capit. Car. Calvi, A.D. 877. Et volumus ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat. Ibid. See too Baluze, t. i. p. 536, 537.

By the Establishments of St. Louis, c. 87, every stranger coming to settle within a barony was to acknowledge the baron as lord within a year and a day, or pay a fine. In some places he even became the serf or villein of the lord. Ordonnances des Rois, p. 187. Upon this jealousy of unknown settlers which pervades the policy of the middle ages was founded the droit d'aubaine, or right to their movables after their decease. See preface to Ordonnances des Rois. t. i. p. 15.

The article Commendatio in Du Cange's Glossary furnishes some hints upon this subject, which, however, that author does not seem to have fully apprehended. Carpentier, in his Supplement to the Glossary, under the word Vassaticum, gives the clearest notice of it that I have anywhere found. Since writing the above pages I have found the subject touched by M. de Montlosier, Hist. de la Monarchie Française, t. i. p. 854. [Note XI.]

d Spelman tells us, in his Treatise of Feuds, chap. ii., that Conradus Salicus, a French emperor, but of German descent [what can this mean?], went to Rome about 915 to fetch his crown from Pope John X., when, according to him, the succession of a son to his father's fief was first conceded. An almost unparalleled blunder in so learned a writer!

Conrad the Salic was elected at Worms in 1024, crowned at Rome by John XIX. in 1027, and made this edict at Milan in 1037.

be deprived of his fief, whether held of the emperor or a mesne lord, but by the laws of the empire and the judgment of his peers;[e] that from such judgment an immediate vassal might appeal to his sovereign; that fiefs should be inherited by sons and their children, or, in their failure, by brothers, provided they were *feuda paterna*, such as had descended from the father;[f] and that the lord should not alienate the fief of his vassal without his consent.[g]

Such was the progress of these feudal tenures, which determined the political character of every European monarchy where they prevailed, as well as formed the foundations of its jurisprudence. It is certainly inaccurate to refer this system, as is frequently done, to the destruction of the Roman empire by the northern nations, though in the beneficiary grants of those conquerors we trace its beginning. Four or five centuries, however, elapsed before the allodial tenures, which had become incomparably the more general, gave way, and before the reciprocal contract of the feud attained its maturity. It is now time to describe the legal qualities and effects of this relation, so far only as may be requisite to understand its influence upon the political system.

The essential principle of a fief was a mutual contract of support and fidelity. Whatever obligations it laid upon the vassal of service to his lord, corresponding duties of protection were imposed by it on the lord towards his vassal.[h] If these were transgressed on either side, the one forfeited his land, the other his seigniory or rights over it. Nor were motives of interest left alone to operate in securing the feudal connection. The

e Nisi secundùm constitutionem antecessorum nostrorum, et judicium pariurn suorum; the very expressions of Magna Charta.

f "Gerardus noteth," says Sir H. Spelman, "that this law settled not the feud upon the eldest son, nor any other son of the feudatory particularly; but left it in the lord's election to please himself with which he would." But the phrase of the edict runs, filios ejus beneficium tenere: which, when nothing more is said, can only mean a partition among the sons.

g The last provision may seem strange at so advanced a period of the system; yet, according to Giannone, feuds were still revocable by the lord in some parts of Lombardy. Istoria di Napoli, l. xiii. c. 3. It seems, however, no more than had been already enacted by the first clause of this edict. Another interpretation is possible; namely, that the lord should not alienate his own seigniory without his vassal's consent, which was agreeable to the feudal tenures. This, indeed, would be putting rather a forced construction on the words ne domino feudum militis alienare liceat.

h Crag. Jus Feudale, l. ii. tit. 11. Beaumanoir, Coûtumes de Beauvoisis, c. lxi. p. 311; Ass. de Jérus. c. 217; Lib. Feud. l. ii. tit. 26, 47.

Upon the mutual obligation of the lord towards his vassal seems to be founded the law of warranty, which compelled him to make indemnification where the tenant was evicted of his land. This obligation, however unreasonable it may appear to us, extended, according to the feudal lawyers, to cases of mere donation. Crag. l. ii. tit. 4; Butler's Notes on Co. Litt. p. 365.

associations founded upon ancient custom and friendly attachment, the impulses of gratitude and honor, the dread of infamy, the sanctions of religion, were all employed to strengthen these ties, and to render them equally powerful with the relations of nature, and far more so than those of political society. It is a question, agitated among the feudal lawyers, whether a vassal is bound to follow the standard of his lord against his own kindred.*i* It was one more important whether he must do so against the king. In the works of those who wrote when the feudal system was declining, or who were anxious to maintain the royal authority, this is commonly decided in the negative. Littleton gives a form of homage, with a reservation of the allegiance due to the sovereign; *j* and the same prevailed in Normandy and some other countries.*k* A law of Frederic Barbarossa enjoins, that in every oath of fealty to an inferior lord the vassal's duty to the emperor should be expressly reserved. But it was not so during the height of the feudal system in France. The vassals of Henry II. and Richard I. never hesitated to adhere to them against the sovereign, nor do they appear to have incurred any blame on that account. Even so late as the age of St. Louis, it is laid down in his Establishments that, if justice is refused by the king to one of his vassals, he might summon his own tenants, under penalty of forfeiting their fiefs, to assist him in obtaining redress by arms.*l* The Count of Brittany, Pierre de Dreux, had practically asserted this feudal right during the minority of St. Louis. In a public instrument he announced to the world, that, having met with repeated injuries from the regent, and denial of justice, he had let the king know that he no longer considered himself as his vassal, but renounced his homage and defied him.*m*

i Crag. l. ii. tit. 4.

j Sect. lxxxv.

k Houard, Anc. Loix des François, p. 114. See too an instance of this reservation in Recueil des Historiens, t. xi. 447.

l Si le sire dit a son homme lige, Venez vous en avec moi, je veux guerroyer mon seigneur, qui me denie le jugement de sa cour, le vassal doit repondre, J'irai scavoir s'il est ainsi que vous me dites. Alors il doit aller trouver le supérieur, et luy dire, Sire, le gentilhomme de qui je tiens mon fief se plaint que vous lui refusez justice; je viens pour en scavoir la vérité; car je suis semoncé de marcher en guerre contre vous. Si la reponse est que volontiers il fera droit en sa cour, l'homme n'est point obligé de déferer à la requisition du sire; mais il doit, ou le suivre, ou le resoudre à perdre son fief, si le chef seigneur persiste dans son refus. Etablissemens de St. Louis, c. 49. I have copied this from Velly, t. vi. p. 213, who has modernized the orthography, which is almost unintelligible in the Ordonnances des Rois. One MS. gives the reading Roi instead of Seigneur. And the law certainly applies to the king exclusively; for, in case of denial of justice by a mesne lord, there was an appeal to the king's court, but from his injury there could be no appeal but to the sword.

m Du Cange, Observations sur Joinville, in Collection des Mémoires, t. i. p. 196. It was always necessary for a

The ceremonies used in conferring a fief were principally three—homage, fealty, and investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing homage, his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord, and promised to become his man from thenceforward; to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage, which was commonly concluded by a kiss.[n] 2. An oath of fealty was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors; and in language differed little from the form of homage.[o] 3. Investiture, or the actual conveyance of feudal lands, was of two kinds, proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called, in our law, livery of seisin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom. Du Cange enumerates not less than ninety-eight varieties of investitures.[p]

Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature uncertain, and distinguished as such from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honor of his family.[q]

vassal to renounce his homage before he made war on his lord, if he would avoid the shame and penalty of feudal treason. After a reconciliation the homage was renewed. And in this no distinction was made between the king and another superior. Thus Henry II. did homage to the King of France in 1188, having renounced his former obligation to him at the commencement of the preceding war. Mat. Paris, p. 126.

n Du Cange, Hominium, and Carpentier's Supplement, id. voc. Littleton, s. 85. Assises de Jérusalem, c. 204; Crag. l. i. tit. 11; Recueil des Historiens, t. ii. préface, p. 174. Homagium per paragium was unaccompanied by any feudal obligation, and distinguished from homagium ligeum, which carried with it an obligation of fidelity. The dukes of Normandy rendered only homage per paragium to the kings of France, and received the like from the dukes of Brittany. In liege homage it was usual to make reservations of allegiance to the king, or any other lord whom the homager had previously acknowledged.

o Littl. s. 91; Du Cange, voc. Fidelitas.

p Du Cange, voc. Investitura.

q Assises de Jérusalem, c. 265. Home ne doit à la feme de son seigneur, ne à sa fille requerre vilainie de son cors, ne

In battle he was bound to lend his horse to his lord, when dismounted; to adhere to his side, while fighting; and to go into captivity as a hostage for him, when taken. His attendance was due to the lord's courts, sometimes to witness, and sometimes to bear a part in, the administration of justice.*r*

The measure, however, of military service was generally settled by some usage. Forty days was the usual term during which the tenant of a knight's fee was bound to be in the field at his own expense.*s* This was extended by St. Louis to sixty days, except when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part, but five; and when this was commuted for an escuage or pecuniary assessment, the same proportion was observed.*t* Men turned of sixty, public magis-

à sa sœur *tant com elle est demoiselle en son hostel.* I mention this part of feudal duty on account of the light it throws on the statute of treasons, 25 E. III. One of the treasons therein specified is, si omne violast la compaigne le roy, *ou leigné file le roy nient marié* ou la compaigne leigné fitz et heire le roy. Those who, like Sir E. Coke and the modern lawyers in general, explain this provision by the political danger of confusing the royal blood, do not apprehend its spirit. It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treasonable, so long only as she remains unmarried, when, as is obvious, the danger of a spurious issue inheriting could not arise. I consider this provision therefore as entirely founded upon the feudal principles, which make it a breach of faith (that is, in the primary sense of the word, a treason) to sully the honor of the lord in that of the near relations who were immediately protected by residence in his house. If it is asked why this should be restricted by the statute to the person of the eldest daughter, I can only answer that this, which is not more reasonable according to the common political interpretation, is analogous to many feudal customs in our own and other countries, which attribute a sort of superiority in dignity to the eldest daughter.

It may be objected that in the reign of Edward III. there was little left of the feudal principle in any part of Europe, and least of all in England. But the statute of treasons is a declaration of the ancient law, and comprehends, undoubtedly, what the judges who drew it could find in records now perished, or in legal traditions of remote antiquity.

Similar causes of forfeiture are enumerated in the Libri Feudorum, l. i. tit. 5, and l. ii. tit. 24. In the Establishments of St. Louis, c. 51, 52, it is said that a lord seducing his vassal's daughter intrusted to his custody lost his seigniory; a vassal guilty of the same crime towards the family of his suzerain forfeited his land. A proof of the tendency which the feudal law had to purify public morals and to create that sense of indignation and resentment with which we now regard such breaches of honor.

r Assises de Jérusalem, c. 222. A vassal, at least in many places, was bound to reside upon his fief, or not to quit it without the lord's consent. Du Cange, voc. Reseantia, Remanentia, Recueil des Historiens, t. xi. préface, p. 172.

s In the kingdom of Jerusalem feudal service extended to a year. Assises de Jérusalem, c. 230. It is obvious that this was founded on the peculiar circumstances of that state. Service of castle guard, which was common in the north of England, was performed without limitation of time. Lyttelton's Henry II., vol. ii. p. 184.

t Du Cange, voc. Feudum militis; Membrum Loricæ. Stuart's View of Society, p. 382. This division by knight's fees is perfectly familiar in the feudal law of England. But I must confess my inability to adduce decisive evidence of it in that of France, with the usual exception of Normandy. According to the natural principle of fiefs, it might seem that the same personal service would be required from the tenant, whatever were the extent of his land. William the Conqueror, it is said, distributed this kingdom into about 60,000 parcels of nearly equal value, from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule must, however, have been observed in all countries in fixing the amercement for absence, which could only be equitable if

trates, and, of course, women, were free from personal service, but obliged to send their substitutes. A failure in this primary duty incurred perhaps strictly a forfeiture of the fief. But it was usual for the lord to inflict an amercement, known in England by the name of escuage.[u] Thus, in Philip III.'s expedition against the Count de Foix in 1274, barons were assessed for their default of attendance at a hundred sous a day for the expenses which they had saved, and fifty sous as a fine to the king; bannerets, at twenty sous for expenses, and ten as a fine; knights and squires in the same proportion. But barons and bannerets were bound to pay an additional assessment for every knight and squire of their vassals whom they ought to have brought with them into the field.[v] The regulations as to the place of service were less uniform than those which regarded time. In some places the vassal was not bound to go beyond the lord's territory,[w] or only so far as that he might return the same day. Other customs compelled him to follow his chief upon all his expeditions.[x] These inconvenient and varying usages betrayed the origin of the feudal obligations, not founded upon any national policy, but springing from the chaos of anarchy and intestine war, which they were well calculated to perpetuate. For the public defence their machinery was totally unserviceable, until such changes were wrought as destroyed the character of the fabric.

Independently of the obligations of fealty and service which the nature of the contract created, other advantages were derived from it by the lord, which have been called feudal incidents; these were, 1. Reliefs. 2. Fines upon alienation.

it bore a just proportion to the value of the fief. And the principle of the knight's fee was so convenient and reasonable that it is likely to have been adopted in imitation of England by other feudal countries. In the roll of Philip III.'s expedition, as will appear by a note immediately below, there are, I think, several presumptive evidences of it; and though this is rather a late authority to establish a feudal principle, yet I have ventured to assume it in the text.

The knight's fee was fixed in England at the annual value of 20*l*. Every estate supposed to be of this value, and entered as such in the rolls of the exchequer, was bound to contribute the service of a soldier, or to pay an escuage to the amount assessed upon knights' fee.

u Littleton, l. ii. c. 3; Wright's Tenures, p. 121.

v Du Chesne, Script. Rerum Gallicarum, t. v. p. 553. Daniel, Histoire de la Milice Françoise, p. 72. The following extracts from the muster-roll of this expedition will illustrate the varieties of feudal obligations. Johannes d'Ormoy debet servitium per quatuor dies. Johannes Malet debet servitium per viginti dies, pro quo servitio misit Richardum Tichet. Guido de Laval debet servitium duorum militum et dimidii. Dominus Sabrandus dictus Chabot dicit quod non debet servitium domino regi, nisi in comitatu Pictaviensi, et ad sumptus regis, tamen venit ad preces regis cum tribus militibus et duodecim scutiferis. Guido de Lusigniaco Dom. de Pierac dicit, quod non debet aliquid regi præter homagium.

w This was the custom of Beauvoisis Beaumanoir, c. 2.

x Du Cange, et Carpentier, voc. Hostis.

3. Escheats. 4. Aids; to which may be added, though not generally established, 5. Wardship, and 6. Marriage.

1. Some writers have accounted for Reliefs in the following manner. Benefices, whether depending upon the crown or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir on receiving a fresh investiture of the fief; and length of time might as legitimately turn this present into a due of the lord, as it rendered the inheritance of the tenant indefeasible. This is a very specious account of the matter. But those who consider the antiquity to which hereditary benefices may be traced, and the unreserved expressions of those instruments by which they were created, as well as the undoubted fact that a large proportion of fiefs had been absolute allodial inheritances, never really granted by the superior, will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble. When a feudal tenant died, the lord, taking advantage of his own strength and the confusion of the family, would seize the estate into his hands, either by the right of force, or under some litigious pretext. Against this violence the heir could in general have no resource but a compromise; and we know how readily acts of successful injustice change their name, and move demurely, like the wolf in the fable, under the clothing of law. Reliefs and other feudal incidents are said to have been established in France [y] about the latter part of the tenth century, and they certainly appear in the famous edict of Conrad the Salic, in 1037, which recognizes the usage of presenting horses and arms to the lord upon a change of tenancy.[z] But this also subsisted under the name of heriot, in England, as early as the reign of Canute.

A relief was a sum of money (unless where charter or custom introduced a different tribute) due from everyone of full age, taking a fief by descent. This was in some countries arbitrary, or *ad misericordiam*, and the exactions practised under this pretence both upon superior and inferior vassals ranked amongst

y Ordonnances des Rois de France, t. i. preface, p. 10.

z Servato *usu* valvassorum majorum in tradendis armis equisque suis serioribus. This, among other reasons, leads me to doubt the received opinion that Italian fiefs were not hereditary before the promulgation of this edict.

the greatest abuses of the feudal policy. Henry I. of England promises in his charter that they shall in future be just and reasonable; but the rate does not appear to have been finally settled till it was laid down in Magna Charta at about a fourth of the annual value of the fief. We find also fixed reliefs among the old customs of Normandy and Beauvoisis. By a law of St. Louis, in 1245,[a] the lord was entitled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king.[b]

Closely connected with reliefs were the fines paid to the lord upon the alienation of his vassal's feud; and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connection between the two parties that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seigniory, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be attained. He had received his fief, it was supposed, for reasons peculiar to himself, or to his family; at least his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger, who might be unable or unwilling to render it. A law of Lothaire II. in Italy forbids the alienation of fiefs without the lord's consent.[c] This prohibition is repeated in one of Frederic I., and a similar enactment was made by Roger, King of Sicily.[d] By the law of France the lord was entitled, upon every alienation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine, upon the change of tenancy.[e] In England even the practice of subinfeudation,

a Ordonnances des Rois, p. 55.

b Du Cange, v. Placitum, Relevium, Sporla. By many customs a relief was due on every change of the lord, as well as of the vassal, but this was not the case in England. Beaumont speaks of reliefs as due only on collateral succession. Coûtumes de Beauvoisis, c. 27. And this, according to Du Cange, was the general rule in the customary law of France. In Anjou and Maine they were not even due upon succession between brothers. Ordonnances des Rois, t. i. p. 58. And M. de Pastoret, in his valuable preface to the sixteenth volume of that collection, says it was a rule that the king had nothing upon lineal succession of a fief, whether in the ascending or descending line, but *la bouche et les mains, i. e.*, homage and fealty: p. 20.

c Lib. Feudorum, l. ii. tit. 9 and 52. This was principally levelled at the practice of alienating feudal property in favor of the church, which was called pro animâ judicare. Radevicus in Gestis Frederic I. l. iv. c. 7; Lib. Feud. l. i. tit. 7, 16, l. ii. tit. 10.

d Giannone, l. ii. c. 5.

e Du Cange, v. Reaccapitum, Placitum, Rachatum. Pastoret, préface au seizième tome des Ordonnances, p. 20;

which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and other advantages of seigniory, was checked by Magna Charta,[f] and forbidden by the statute 18 Edward I., called Quia Emptores, which at the same time gave the liberty of alienating lands, to be holden to the grantor's immediate lord. The tenants of the crown were not included in this act; but that of 1 Edward III. c. 12, enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one-third of the annual value of the lands.[g]

These restraints, placed for the lord's advantage upon the transfer of feudal property, are not to be confounded with those designed for the protection of heirs and preservation of families. Such were the *jus protimeseos* in the books of the fiefs,[h] and *retrait lignager* of the French law, which gave to the relations of the vendor a preëmption upon the sale of any fief, and a right of subsequent redemption. Such was the positive prohibition of alienating a fief held by descent from the father (feudum paternum), without the consent of the kindred on that line.[i] Such, too, were the still more rigorous fetters imposed by the English statute of entails, which precluded all lawful alienation, till, after two centuries, it was overthrown by the fictitious process of a common recovery. Though these partake in some measure of the feudal spirit, and would form an important head in the legal history of that system, it will be

Houard, Dict. du Droit Normand, art. Fief Argou, Inst. du Droit François, l. ii. c. 2. In Beaumanoir's age and district at least, subinfeudation without the lord's license incurred a forfeiture of the land; and his reason extends of course more strongly to alienation. Coûtumes de Beauvoisis, c. 2; Velly, t. vi. p. 187. But, by the general law of feuds, the former was strictly regular, while the tenant forfeited his land by the latter. Craig mentions this distinction as one for which he is perplexed to account. Jus Feudale, l. iii. tit. 3, p. 632. It is, however, perfectly intelligible upon the original principles of feudal tenure.

f Dalrymple seems to suppose that the 32d chapter of Magna Charta relates to alienation and not to subinfeudation. Essay on Feudal Property, edit. 1758, p. 83. See Sir E. Coke, 2 Inst. p. 65, 501; and Wright on Tenures, contrà. Mr. Hargrave observes that "the history of our law with respect to the powers of alienation before the statute of Quia Emptores terrarum is very much involved in obscurity." Notes on Co. Lit. 43, a. In Glanville's time apparently a man could only alienate (to hold of himself) rationabilem partem de terrâ suâ, l. vii. c. 1. But this may have been in favor of the kindred as much as of the lord. Dalrymple's Essay, ubi suprà.

It is probable that Coke is mistaken in supposing that "at the common law the tenant might have made a feoffment of the whole tenancy to be holden of the lord."

g 2 Inst. p. 66; Blackstone's Commentaries, vol. ii. c. 5.

h Lib. Feud. l. v. t. 13. There were analogies to this jus προτιμήσεως in the Roman law, and, still more closely, in the constitutions of the latter Byzantine emperors.

i Alienatio feudi paterni non valet etiam domini voluntate, nisi agnatis consentientibus. Lib. Feud. apud Wright on Tenures, pp. 108, 156.

sufficient to allude to them in a sketch which is confined to the development of its political influence.

A custom very similar in effect to subinfeudation was the tenure by *frérage*, which prevailed in many parts of France. Primogeniture, in that extreme which our common law has established, was unknown, I believe, in every country upon the Continent. The customs of France found means to preserve the dignity of families, and the indivisibility of a feudal homage, without exposing the younger sons of a gentleman to absolute beggary or dependence. Baronies, indeed, were not divided; but the eldest son was bound to make a provision in money, by way of appanage, for the other children, in proportion to his circumstances and their birth.*j* As to inferior fiefs, in many places an equal partition was made; in others, the eldest took the chief portion, generally two-thirds, and received the homage of his brothers for the remaining part, which they divided. To the lord of whom the fief was held, himself did homage for the whole.*k* In the early times of the feudal policy, when military service was the great object of the relation between lord and vassal, this, like all other subinfeudation, was rather advantageous to the former; for when the homage of a fief was divided, the service was diminished in proportion. Suppose, for example, the obligation of military attendance for an entire manor to have been forty days; if that came to be equally split among two, each would owe but a service of twenty. But if, instead of being homagers to the same suzerain, one tenant held immediately of the other, as every feudatory might summon the aid of his own vassals, the superior lord would, in fact, obtain the service of both. Whatever opposition, therefore, was made to the rights of subinfeudation or frérage, would indicate a decay in the military character, the living principle of feudal tenure. Accordingly, in the reign of Philip Augustus, when the fabric was beginning to shake, we find a confederate agreement of some principal nobles sanctioned by the king, to abrogate the mesne

j Du Cange, v. Apanamentum, Baro. Baronie ne depart mie entre frères se leur pere ne leur a fait partie; mes li ainsnez doit faire avenant bienfet au puisné, et si doit les filles marier. Etablissem. de St. Louis, c. 24.

k This was also the law of Flanders and Hainault. Martenne, Thesaurus Anecdotor, t. i. p. 1092. The customs as to succession were exceedingly various, as indeed they continued to be until the late generalization of French law. Recueil des Histor. t. ii. préface, p. 108; Hist. de Languedoc, t. ii. p. 111, 511. In the former work it is said that primogeniture was introduced by the Normans from Scandinavia.

tenure of younger brothers, and establish an immediate dependence of each upon the superior lord.[l] This, however, was not universally adopted, and the original frérage subsisted to the last in some of the customs of France.[m]

As fiefs descended but to the posterity of the first taker, or at the utmost to his kindred, they necessarily became sometimes vacant for want of heirs; especially where, as in England, there was no power of devising them by will. In this case it was obvious that they ought to revert to the lord, from whose property they had been derived. These reversions became more frequent through the forfeitures occasioned by the vassal's delinquency, either towards his superior lord or the state. Various cases are laid down in the Assises de Jérusalem, where the vassal forfeits his land for a year, for his life, or forever.[n] But under rapacious kings, such as the Norman line in England, absolute forfeitures came to prevail, and a new doctrine was introduced, the corruption of blood, by which the heir was effectually excluded from deducing his title at any distant time through an attainted ancestor.

Reliefs, fines upon alienation, and escheats, seem to be natural reservations in the lord's bounty to his vassal. He had rights of another class which principally arose out of fealty and intimate attachment. Such were the aids which he was entitled to call for in certain prescribed circumstances. These depended a great deal upon local custom, and were often extorted unreasonably. Du Cange mentions several as having existed in France; such as an aid for the lord's expedition to the Holy Land, for marrying his sister or eldest son, and for paying a relief to his suzerain on taking possession of his land.[o] Of these, the last appears to have been the most usual in England. But this, and other aids occasionally exacted by the lords, were felt as a severe grievance; and by Magna Charta three only are retained; to make the lord's eldest son a knight, to marry his eldest daughter, and to redeem his person from prison. They were restricted to nearly the same description by a law of William I. of Sicily, and by the customs of France.[p] These feudal aids are deserving of our attention, as the beginnings of taxation, of which for a long time they in a great

l Ordonnances des Rois, t. i. p. 29.
m Du Cange, Dissert. III. sur Joinville: Beauman. c. 47.
n C. 200, 201.
o Du Cange, voc. Auxilium.
p Giannone, l. xii. c. 5; Velly, t. vi. p. 200; Ordonnances des Rois, t. i. p. 138, t. xvi. préface.

measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burdens.

I might here, perhaps, close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country, and tend to illustrate the rapacious character of a feudal aristocracy.

In England, and in Normandy, which either led the way to, or adopted, all these English institutions, the lord had the wardship of his tenant during minority.[q] By virtue of this right he had both the care of his person and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit, since none was so fit as the lord to train up his vassal to arms, and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany;[r] but in the law of France the custody of the land was intrusted to the next heir, and that of the person, as in socage tenures among us, to the nearest kindred of that blood which could not inherit.[s] By a gross abuse of this custom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers. This was one of the most vexatious parts of our

q Recueil des Historiens, t. xi. préf. p. 162; Argou, Inst. au Droit François, l. i. c. 6; Houard, Anciennes Loix des François, t. i. p. 147.

r Schilter, Institutiones Juris Feudalis, p. 85.

s Du Cange, v. Custodia; Assises de Jérusalem, c. 178; Etablissemens de St. Louis, c. 17; Beaumanoir, c. 15; Argou, l. i. c. 6. The second of these uses nearly the same expression as Sir John Fortescue in accounting for the exclusion of the next heir from guardianship of the person; that mauvaise convoitise li fairoit faire la garde du loup.

I know not any mistake more usual in English writers who have treated of the feudal law than that of supposing that guardianship in chivalry was an universal custom. A charter of 1198, in Rymer, t. i. p. 105, seems indeed to imply that the incidents of garde noble and of marriage existed in the Isle of Oleron. But Eleanor, by a later instrument, grants that the inhabitants of that island should have the wardship and marriage of their heirs without any interposition, and expressly abrogates all the evil customs that her husband had introduced: p. 112. From hence I should infer that Henry II. had endeavored to impose these feudal burdens (which perhaps were then new even in England) upon his continental dominions. Radulphus de Diceto tells us of a claim made by him to the wardship of Châteauroux in Berry, which could not legally have been subject to that custom. Twysden, X Scriptores, p. 599. And he set up pretensions to the custody of the duchy of Brittany after the death of his son Geoffrey. This might perhaps be justified by the law of Normandy, on which Brittany depended. But Philip Augustus made a similar claim. In fact, these political assertions of right, prompted by ambition and supported by force, are bad precedents to establish rules of jurisprudence. Both Philip and Henry were abundantly disposed to realize so convenient a prerogative as that of guardianship in chivalry over the fiefs of their vassals. Lyttleton's Henry II. vol. iii. p. 441.

feudal tenures, and was never, perhaps, more sorely felt than in their last stage under the Tudor and Stuart families.

Another right given to the lord by the Norman and English laws, was that of marriage, or of tendering a husband to his female wards while under age, whom they could not reject without forfeiting the value of the marriage; that is, as much as anyone would give to the guardian for such an alliance. This was afterwards extended to male wards, and became a very lucrative source of extortion to the crown, as well as to mesne lords. This custom seems to have had the same extent as that of wardships. It is found in the ancient books of Germany, but not of France.[t] The kings, however, and even inferior lords, of that country, required their consent to be solicited for the marriage of their vassals' daughters. Several proofs of this occur in the history as well as in the laws of France; and the same prerogative existed in Germany, Sicily, and England.[u] A still more remarkable law prevailed in the kingdom of Jerusalem. The lord might summon any female vassal to accept one of three whom he should propose as her husband. No other condition seems to have been imposed on him in selecting these suitors than that they should be of equal rank with herself. Neither the maiden's coyness nor the widow's affliction, neither aversion to the proffered candidates nor love to one more favored, seem to have passed as legitimate excuses. One, only one, plea could come from the lady's mouth who was resolute to hold her land in single blessedness. It was, that she was past sixty years of age; and after this unwelcome confession it is justly argued by the author of the law-book which I quote, that the lord could not decently press her into matrimony.[v] However outrageous such an usage may appear to our ideas, it is to be recollected that the

[t] Schilter, ubi suprà. Du Cange, voc. Disparagare, seems to admit this feudal right in France; but the passages he quotes do not support it. See also the word Maritagium. [M. Guizot has, however, observed (Hist. de la Civilisation en France, Leçon 39) that the feudal incidents of guardianship in chivalry by marriage were more frequent than I seem to suppose. The customary law was so variable, that it is dangerous to rely on particular instances, or to found a general negative on their absence. 1848.]

[u] Ordonnances des Rois, t. i. p. 155; Assises de Jérus. c. 180, and Thaumassière's note; Du Cange, ubi suprà; Glanvil. l. vii. c. 12; Giannone, l. xi. c. 5; Wright on Tenures, p. 94. St. Louis in return declared that he would not marry his own daughter without the consent of his barons. Joinville, t. ii. p. 140. Henry I. of England had promised the same. The guardian of a female minor was obliged to give security to her lord not to marry her without his consent. Etablissemens de St. Louis, c. 63.

[v] Ass. de Jérus. c. 224. I must observe that Lauriere says this usage prevailed en plusieurs lieux, though he quotes no authority.—Ordonnances des Rois, p. 155.

peculiar circumstances of that little state rendered it indispensable to possess in every fief a proper vassal to fulfil the duties of war.

These feudal servitudes distinguish the maturity of the system. No trace of them appears in the capitularies of Charlemagne and his family, nor in the instruments by which benefices were granted. I believe that they did not make part of the regular feudal law before the eleventh, or, perhaps, the twelfth century, though doubtless partial usages of this kind had grown up antecedently to either of those periods. If I am not mistaken, no allusion occurs to the lucrative rights of seigniory in the Assises de Jérusalem, which are a monument of French usages in the eleventh century. Indeed, that very general commutation of allodial property into tenure which took place between the middle of the ninth and eleventh centuries would hardly have been effected if fiefs had then been liable to such burdens and so much extortion. In half-barbarous ages the strong are constantly encroaching upon the weak; a truth which, if it needed illustration, might find it in the progress of the feudal system.

We have thus far confined our inquiry to fiefs holden on terms of military service; since those are the most ancient and regular, as well as the most consonant to the spirit of the system. They alone were called proper feuds, and all were presumed to be of this description until the contrary was proved by the charter of investiture. A proper feud was bestowed without price, without fixed stipulation, upon a vassal capable of serving personally in the field. But gradually, with the help of a little legal ingenuity, improper fiefs of the most various kinds were introduced, retaining little of the characteristics, and less of the spirit, which distinguished the original tenures. Women, if indeed that were an innovation, were admitted to inherit them;[w] they were granted for a price, and without reference to military service. The language of the feudal law was applied by a kind of metaphor to almost every transfer of property. Hence pensions of money and allowances of provisions, however remote from right notions of a fief, were sometimes granted under that name; and even where land

[w] Women did not inherit fiefs in the German empire. Whether they were ever excluded from succession in France I know not; the genius of a military tenure, and the old Teutonic customs, preserved in the Salic law, seem adverse to their possession of feudal lands; yet the practice, at least from the eleventh century downwards, does not support the theory.

was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous.[x]

There is one extensive species of feudal tenure which may be distinctly noticed. The pride of wealth in the middle ages was principally exhibited in a multitude of dependents. The court of Charlemagne was crowded with officers of very rank, some of the most eminent of whom exercised functions about the royal person which would have been though fit only for slaves in the palace of Augustus or Antonine. The freeborn Franks saw nothing menial in the titles of cup-bearer, steward, marshal, and master of the horse, which are still borne by the noblest families in many parts of Europe, and, till lately, by sovereign princes in the empire.[y] From the court of the king this favorite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers called ministerials; a name equally applied to those of a servile and of a liberal description.[z] The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord. What was called in our law grand serjeanty affords an instance of this species of fief.[a] It is, however, an instance of the noblest kind; but Muratori has given abundance of proofs that the commonest mechanical arts were carried on in the houses of the great by persons receiving lands upon those conditions.[b]

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch because they attest the partiality manifested during the middle

[x] Crag. Jus Feudale, l. i. tit. 10; Du Cange, voc. Feudum de Camerâ, &c. In the treaty between Henry I. of England and Robert, Count of Flanders, A.D. 1101, the king stipulates to pay annually 400 marks of silver, *in feodo*, for the military service of his ally. Rymer, Fœdera, t. i. p. 2.

[y] The Count of Anjou, under Louis VI., claimed the office of Great Seneschal of France; that is, to carry dishes to the king's table on state days. (Sismondi, v. 135.) Thus the feudal notions of grand serjeanty prepared the way for the restoration of royal supremacy, as the military tenures had impaired it. The wound and the remedy came from the same lance. If the feudal system was incompatible with despotism, and even, while in its full vigor, with legitimate authority, it kept alive the sense of a supreme chief, of a superiority of rank, of a certain subjection to an hereditary sovereign, not yet testified by unlimited obedience, but by homage and loyalty.

[z] Schmidt, Hist. des Allemands, t. iii. p. 92; Du Cange, v. Familia, Ministeriales.

[a] "This tenure," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his array, or to be his marshal, or to carry his sword before him at his coronation, or to be his sewer at his coronation, or his carver, or his butler, or to be one of his chamberlains at the receipt of his exchequer, or to do other like services." Sect. 153.

[b] Antiq. Ital. Dissert. 11, ad finem.

ages to the name and form of a feudal tenure. In the regular military fief we see the real principle of the system, which might originally have been defined an alliance of free landholders arranged in degrees of subordination, according to their respective capacities of affording mutual support.

The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system. For a length of time this rested in traditionary customs, observed in the domains of each prince or lord, without much regard to those of his neighbors. Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries. About the year 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the groundwork of that jurisprudence.[c] A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgment of the imperial tribunals. These were chiefly civilians or canonists, who brought to the interpretation of old barbaric customs the principles of a very different school. Hence a manifest change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code; modes of property somewhat analogous in appearance, but totally distinct in principle, from the legitimate fief. These Lombard lawyers propagated a doctrine which has been too readily received, that the feudal system originated in their country; and some writers upon jurisprudence, such as Duck and Sir James Craig, incline to give a preponderating authority to their code. But whatever weight it may have possessed within the limits of the empire, a different guide must be followed in the ancient customs of France and England.[d] These were fresh from the fountain of that curious polity with which the stream of Roman law had never mingled its waters. In England we know that the Norman system established between the Conquest and the reign of Henry II. was restrained by

[c] Giannone, Ist. di Napoli, l. xiii. c. 3. The Libri Feudorum are printed in most editions of the Corpus Juris Civilis.

[d] Giannone explicitly contrasts the French and Lombard laws respecting fiefs. The latter was the foundation of the Libri Feudorum, and formed the common law of Italy. The former was introduced by Roger Guiscard into his dominions, in three books of constitutions, printed in Lindebrog's collection. There were several material differences, which Giannone enumerates, especially the Norman custom of primogeniture. Ist. di Nap. l. xi. c. 5.

regular legislation, by paramount courts of justice, and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law. But the independence of the French nobles produced a much greater variety of customs. The whole number collected and reduced to certainty in the sixteenth century, amounted to two hundred and eighty-five, or, omitting those inconsiderable for extent or peculiarity, to sixty. The earliest written customary in France is that of Bearn, which is said to have been confirmed by Viscount Gaston IV. in 1088.*e* Many others were written in the two subsequent ages, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III., are the most celebrated, and contain a mass of information on the feudal constitution and manners. Under Charles VII. an ordinance was made for the formation of a general code of customary law, by ascertaining forever in a written collection those of each district; but the work was not completed till the reign of Charles IX. This was what may be called the common law of the *pays coutumiers*, or northern division of France, and the rule of all their tribunals, unless where controlled by royal edicts.

e There are two editions of this curious old code; one at Pau, in 1552, republished with a fresh title-page and permission of Henry IV. in 1602; the other at Lescars, in 1633. These laws, as we read them, are subsequent to a revision made in the middle of the sixteenth century, in which they were more or less corrected. The basis, however, is unquestionably very ancient. We even find the composition for homicide preserved in them, so that murder was not a capital offence in Bearn, though robbery was such.—Rubrica de Homicidis, Art. xxxi. See too Rubrica de Pœnis, Art. i. and ii.

PART II.

Analysis of the Feudal System—Its local Extent—View of the different Orders of Society during the Feudal Ages—Nobility—Their Ranks and Privileges—Clergy—Freemen—Serfs or Villeins—Comparative State of France and Germany—Privileges enjoyed by the French Vassals—Right of Coining Money—And of private War—Immunity from Taxation—Historical View of the Royal Revenue in France—Methods Adopted to Augment it by Depreciation of the Coin, etc.—Legislative Power—Its State under the Merovingian Kings and Charlemagne—His Councils—Suspension of any General Legislative Authority during the Prevalence of Feudal Principles—The King's Council—Means adopted to supply the Want of a National Assembly—Gradual Progress of the King's Legislative Power—Philip IV. assembles the States-General—Their Powers limited to Taxation—States under the Sons of Philip IV.—States of 1355 and 1356—They nearly effect an entire Revolution—The Crown recovers its Vigor—States of 1380, under Charles VI.—Subsequent Assemblies under Charles VI. and Charles VII.—The Crown becomes more and more absolute—Louis XI.—States of Tours in 1484—Historical View of Jurisdiction in France—Its earliest Stage under the first Race of Kings and Charlemagne—Territorial Jurisdiction—Feudal Courts of Justice—Trial by Combat—Code of St. Louis—The Territorial Jurisdictions give way—Progress of the Judicial Power of the Crown—Parliament of Paris—Peers of France—Increased Authority of the Parliament—Registration of Edicts—Causes of the Decline of the Feudal System—Acquisitions of Domain by the Crown—Charters of Incorporation granted to Towns—Their previous Condition—First Charters in the Twelfth Century—Privileges contained in them—Military Service of Feudal Tenants commuted for Money—Hired Troops—Change in the Military System of Europe—General View of the Advantages and Disadvantages attending the Feudal System.

The advocates of a Roman origin for most of the institutions which we find in the kingdoms erected on the ruins of the empire are naturally prone to magnify the analogies to feudal tenure which Rome presents to us, and even to deduce it either from the ancient relation of patron and client, and that of personal commendation, which was its representative in a later age, or from the frontier lands granted in the third century to the Læti, or barbarian soldiers, who held them,

doubtless, subject to a condition of military service. The usage of commendation especially, so frequent in the fifth century, before the conquest of Gaul, as well as afterwards, does certainly bear a strong analogy to vassalage, and I have already pointed it out as one of its sources. It wanted, however, that definite relation to the tenure of land which distinguished the latter. The royal Antrustio (whether the word *commendatus* were applied to him or not) stood bound by gratitude and loyalty to his sovereign, and in a very different degree from a common subject; but he was not perhaps strictly a vassal till he had received a territorial benefice.*a* The complexity of subinfeudation could have no analogy in commendation.

The grants to veterans and to the Læti are so far only analogous to fiefs that they established the principle of holding lands on a condition of military service. But this service was no more than what, both under Charlemagne and in England, if not in other times and places, the allodial freeholder was bound to render for the defence of the realm; it was more commonly required, because the lands were on a barbarian frontier; but the duty was not even very analogous to that of a feudal tenant.*b*. The essence of a fief seems to be, that its tenant owed fealty to a lord, and not to the state or the sovereign; the lord might be the latter, but it was not, feudally speaking, as a sovereign that he was obeyed. This is, therefore, sufficient to warrant us in tracing the real theory of feuds no higher than the Merovingian history in France; their full establishment, as has been seen, is considerably later. But the preparatory steps in the constitutions of the declining empire are of considerable importance, not merely as analogies, but as predisposing circumstances, and even germs to be subsequently developed. The beneficiary tenure of lands could not well be brought by the conquerors from Germany; but the donatives of arms or precious metals bestowed by the chiefs

a This word "vassal" is used very indefinitely; it means, in its original sense, only a servant or dependant. But in the continental records of histories we commonly find it applied to feudal tenants.

b If Gothofred is right in his construction of the tenure of these Læti, they were not even generally liable to this part of our *trinoda necessitas*, but only to conscription for the legions. Et ea tamen conditione terras illis excolendas Læti consequebantur, ut *delectibus quoque ob noxii essent* et legionibus insererentur (Not. ad Cod. Theod. l. vii. tit. 20, c. 12). Sir Francis Palgrave, however, says,—"The duty of bearing arms was inseparably connected with the property." (English Commonwealth, i. 354.) This is too equivocal; but he certainly means more than Gothofred; he supposes a permanent universal obligation to render service in all public warfare.

on their followers were also analogous to fiefs; and, as the Roman institutions were one source of the law of tenure, so these were another.

It is of great importance to be on our guard against seeming analogies which vanish when they are closely observed. We should speak inaccurately if we were to use the word feudal for the service of the Irish or Highland clans to their chieftain; their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble were in servitude. No government can be more opposite to the long gradations and mutual duties of the feudal system.*c*

The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which afterwards derived it from thence. In England it can hardly be thought to have existed in a complete state before the Conquest. Scotland, it is supposed, borrowed it soon after from her neighbor. The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterwards perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis.*d* Charlemagne's empire, it must be remembered, extended as far as

c In civil history many instances might be found of feudal ceremonies in countries not regulated by the feudal law. Thus Selden has published an infeudation of a vayvod of Moldavia by the King of Poland, A.D. 1485, in the regular forms, vol. iii. p. 514. But these political fiefs have hardly any connection with the general system, and merely denote the subordination of one prince or people to another.

d It is probable that feudal tenure was as ancient in the north of Spain as in the contiguous provinces of France. But it seems to have chiefly prevailed in Aragon about the twelfth and thirteenth centuries, when the Moors south of the Ebro were subdued by the enterprise of private nobles, who, after conquering estates for themselves, did homage for them to the king. James I., upon the reduction of Valencia, granted lands by way of fief, on condition of defending that kingdom against the Moors, and residing personally upon the estate. Many did not perform this engagement, and were deprived of the lands in consequence. It appears by the testament of this monarch that feudal tenures subsisted in every part of his dominions.—Martenne, Thesaurus Anecdotorum, t. i. p. 1141, 1155. An edict of Peter II. in 1210 prohibits the alienation of *emphyteuses* without the lord's consent. It is hard to say whether regular fiefs are meant by this word.—De Marca, Marca Hispanica, p. 1396. This author says that there were no arriere-fiefs in Catalonia.

The Aragonese fiefs appear, however, to have differed from those of other countries in some respects. Zurita mentions fiefs according to the custom of Italy, which he explains to be such as were liable to the usual feudal aids for marrying the lord's daughter, and other occasions. We may infer, therefore, that these prestations were not customary in Aragon.—Anales de Aragon, t. ii. p. 62.

the Ebro. But in Castile *e* and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia.*f* Neither of these, however, nor Sweden, nor Hungary, come under the description of countries influenced by the feudal system.*g* That system, however, after all these limitations, was so extensively diffused, that it might produce confusion as well as prolixity to pursue collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust, of important information. The English constitution will find its place in another portion of these volumes; and the political condition of Italy, after the eleventh century, was not much affected, except in the kingdom of Naples, by the laws of feudal tenure. I shall confine myself, therefore, chiefly to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

It has been laid down already as most probable that no proper aristocracy, except that of wealth, was known under the early kings of France; and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent. The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the state. They were immediately connected with the crown, and partakers in the exercise of

e What is said of vassalage in Alfonzo X.'s code, Las siete partidas, is short and obscure; nor am I certain that it meant anything more than voluntary commendation, the custom mentioned in the former part of this chapter, from which the vassal might depart at pleasure. See, however, Du Cange, v. Honor, where authorities are given for the existence of Castilian fiefs; and I have met with occasional mention of them in history. I believe that tenures of this kind were introduced in the fourteenth and fifteenth centuries; but not to any great extent.—Marina, Teoria de las Cortes, t. iii. p. 14.

Tenures of a feudal nature, as I collect from Freirii Institut. Juris Lusitani, tom. ii. t. 1 and 3, existed in Portugal, though the jealousy of the crown prevented the system from being established. There were even territorial jurisdictions in that kingdom, though not, at least originally, in Castile.

f Daniæ regni politicus status. Elzevir, 1629. Stransky, Respublica Bohemica, ib. In one of the oldest Danish historians, Sweno, I have noticed this expression: Waldemarus, patris tunc potitus *feodo*. Langebek, Scrip. Rerum Danic. t. i. p. 62. By this he means the duchy of Sleswic, not a fief, but an honor or government possessed by Waldemar. Saxo Grammaticus calls it more classically, paternæ præfecturæ dignitas. Sleswic was, in later times, sometimes held as a fief; but this does not in the least imply that lands in Denmark proper were feudal, of which I find no evidence.

g Though there were no feudal tenures in Sweden, yet the nobility and others were exempt from taxes on condition of serving the king with a horse and arms at their own expense; and a distinction was taken between *liber* and *tributarius*. But any one of the latter might become of the former class, or vice versâ.—Sueciæ descriptio. Elzevir, 1631, p. 92.

justice and royal counsels. Their sons now came to inherit this eminence; and, as fiefs were either inalienable, or at least not very frequently alienated, rich families were kept long in sight; and, whether engaged in public affairs or living with magnificence and hospitality at home, naturally drew to themselves popular estimation. The dukes and counts, who had changed their quality of governors into that of lords over the provinces intrusted to them, were at the head of this noble class. And in imitation of them, their own vassals, as well as those of the crown, and even rich allodialists, assumed titles from their towns or castles, and thus arose a number of petty counts, barons, and viscounts. This distinct class of nobility became coextensive with the feudal tenures.[h] For the military tenant, however poor, was subject to no tribute; no prestation, but service in the field; he was the companion of his lord in the sports and feasting of his castle, the peer of his court; he fought on horseback, he was clad in the coat of mail, while the commonalty, if summoned at all to war, came on foot, and with no armor of defence. As everything in the habits of society conspired with that prejudice which, in spite of moral philosophers, will constantly raise the profession of arms above all others, it was a natural consequence that a new species of aristocracy, founded upon the mixed considerations of birth, tenure, and occupation, sprang out of the feudal system. Every possessor of a fief was a gentleman, though he owned but a few acres of land, and furnished his slender contribution towards the equipment of a knight. In the Libri Feudorum, indeed, those who were three degrees removed from the emperor in order of tenancy are considered as ignoble;[i] but this is restrained to modern investitures; and in France, where subinfeudation was carried the farthest, no such distinction has met my observation.[j]

There still, however, wanted something to ascertain gentility of blood where it was not marked by the actual tenure of land.

h M. Guérard observes that in the Chartulary of Chartres, exhibiting the usages of the eleventh and beginning of the twelfth centuries, "La noblesse s'y montre complètement constitutée; c'est à dire, privilégiée et héréditaire. Elle peut être divisée en haute, moyenne, et basse." By the first he understands those who held immediately of the crown; the middle nobility were mediate vassals, but had rights of jurisdiction, which the lower had not. (Prolégomènes à la Cartulaire de Chartres, p. 30.)

i L. ii. t. 10.

j The nobility of an allodial possession, in France, depended upon its right to territorial jurisdiction. Hence there were *franc-aleux nobles* and *franc-aleux roturiers;* the latter of which were subject to the jurisdiction of the neighboring lord. Loiseau, Traité des Seigneuries, p. 76. Denisart, Dictionnaire des Décisions, art. Franc-aleu.

This was supplied by two innovations devised in the eleventh and twelfth centuries—the adoption of surnames and of armorial bearings. The first are commonly referred to the former age, when the nobility began to add the names of their estates to their own, or, having any way acquired a distinctive appellation, transmitted it to their posterity.[k] As to armorial bearings, there is no doubt that emblems somewhat similar have been immemorially used both in war and peace. The shields of ancient warriors, and devices upon coins or seals, bear no distant resemblance to modern blazonry. But the general introduction of such bearings, as hereditary distinctions, has been sometimes attributed to tournaments, wherein the champions were distinguished by fanciful devices; sometimes to the crusades, where a multitude of all nations and languages stood in need of some visible token to denote the banners of their respective chiefs. In fact, the peculiar symbols of heraldry point to both these sources, and have been borrowed in part from each.[l] Hereditary arms were perhaps scarcely used by private families before the beginning of the thirteenth century.[m] From that time, however, they became very general, and have

k Mabillon, Traité de Diplomatique, l. ii. c. 7. The authors of the Nouveau Traité de Diplomatique, t. ii. p. 563, trace the use of surnames in a few instances even to the beginning of the tenth century; but they did not become general, according to them, till the thirteenth.

M. Guérard finds a few hereditary surnames in the eleventh century and many that were personal. (Cartulaire de Chartres, p. 93.) The latter are not surnames at all, in our usual sense. A good many may be found in Domesday, as that of Burdet in Leicestershire, Malet in Suffolk, Corbet in Shropshire, Colville in Yorkshire, besides those with *de*, which of course is a local designation, but became hereditary.

l Mém. de l'Acad. des Inscriptions, t. xx. p. 579.

m I should be unwilling to make a negative assertion peremptorily in a matter of mere antiquarian research; but I am not aware of any decisive evidence that hereditary arms were borne in the twelfth century, except by a very few royal or almost royal families. Mabillon, Traité de Diplomatique, l. ii. c. 18. Those of Geoffrey the Fair, Count of Anjou, who died in 1150, are extant on his shield; azure, four lions rampant or. Hist. Littéraire de la France, t. ix. p. 165. If arms had been considered as hereditary at that time, this should be the bearing of England, which, as we all know, differs considerably. Louis VII. sprinkled his seal and coin with fleurs-de-lys, a very ancient device, or rather ornament, and the same as what are sometimes called bees. The golden ornaments found in the tomb of Childeric I. at Tournay, which may be seen in the library of Paris, may pass either for fleurs-de-lys or bees. Charles V. reduced the number to three, and thus fixed the arms of France. The counts of Toulouse used their cross in the twelfth age; but no other arms, Vaissette tells us, can be traced in Languedoc so far back. T. iii. p. 514.

Armorial bearings were in use among the Saracens during the later crusades; as appears by a passage in Joinville, t. i. p. 88 (Collect. des Mémoires), and Du Cange's note upon it. Perhaps, however, they may have been adopted in imitation of the Franks, like the ceremonies of knighthood. Villaret ingeniously conjectures that the separation of different branches of the same family by their settlements in Palestine led to the use of hereditary arms, in order to preserve the connection. T. xi. p. 113.

M. Sismondi, I observe, seems to entertain no doubt that the noble families of Pisa, including that whose name he bears, had their armorial distinctions in the beginning of the twelfth century. Hist. des Répub. Ital. t. i. p. 373. It is at least probable that the heraldic devices were as ancient in Italy as in any part of Europe. And the authors of Nouveau Traité de Diplomatique, t. iv. p. 388, incline to refer hereditary arms even in France to the beginning of the twelfth century, though without producing any evidence for this.

contributed to elucidate that branch of history which regards the descent of illustrious families.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high-born and ignoble classes, almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the former; those excepted which appertain to the legal profession. A plebeian could not possess a fief.[n] Such at least was the original strictness; but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterwards to purchasers.[o] They were even permitted to become noble by the acquisition, or at least by its possession for three generations.[p] But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine, known by the name of franc-fief, from plebeians in possession of land held by a noble tenure.[q] A gentleman in France or Germany could not exercise any trade without derogating, that is, losing, the advantages of his rank. A few exceptions were made, at least in the former country, in favor of some liberal arts, and of foreign commerce.[r] But in nothing does the feudal haughtiness of birth more show itself than in the disgrace which attended unequal marriages. No children could inherit a territory held immediately of the empire unless both their parents belonged to the higher class of nobility. In France the offspring of a gentleman by a plebeian mother were reputed noble for the

n We have no English word that conveys the full sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by commoner! Roturier, according to Du Cange, is derived from rupturarius, a peasant, ab agrum rumpendo.

o The Establishments of St. Louis forbid this innovation, but Beaumanoir contends that the prohibition does not extend to descent or marriage, c. 48. The roturier who acquired a fief, if he challenged any one, fought with ignoble arms; but in all other respects was treated as a gentleman. Ibid. Yet a knight was not obliged to do homage to the roturier who became his superior by the acquisition of a fief on which he depended. Carpentier, Supplement. ad Du Cange, voc. Homagium.

p Etablissemens de St. Louis, c. 143, and note, in Ordonnances des Rois, t. i. See also preface to the same volume, p. xii. According to Mably, the possession of a fief did not cease to confer nobility (analogous to our barony by tenure) till the Ordonnances des Blois in 1579. Observations sur l'Hist. de France, l. iii. c. 1 note 6. But Laurière, author of the preface above cited, refers to Bouteiller, a writer of the fourteenth century, to prove that no one could become noble without the king's authority. The contradiction will not much perplex us, when we reflect on the disposition of lawyers to ascribe all prerogatives to the crown, at the expense of territorial proprietors and of ancient customary law.

q The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair. Ordonnances des Rois, t. i. p. 324; Denisart, art. Franc-fief.

r Houard, Dict. du Droit Normand Encyclopédie, art. Noblesse. Argou, l. ii. c. 2.

purposes of inheritance and of exemption from tribute.[s] But they could not be received into any order of chivalry, though capable of simple knighthood; nor were they considered as any better than a bastard class deeply tainted with the alloy of their maternal extraction. Many instances occur where letters of nobility have been granted to reinstate them in their rank.[t] For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters, that is, of coats borne by paternal and maternal ancestors, and the same practice still subsists in Germany.[u]

It appears, therefore, that the original nobility of the Continent were what we may call self-created, and did not derive their rank from any such concessions of their respective sovereigns as have been necessary in subsequent ages. In England the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown. But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land. Philip the Hardy, in 1271, was the first French king who granted letters of nobility; under the reigns of Philip the Fair and his children they gradually became frequent.[v] This effected a change in the character of nobility, and had as obvious a moral, as other events of the same age had a political, influence in diminishing the power and independence of the territorial aristocracy. The privileges originally connected with ancient lineage and extensive domains became common to the low-born creatures of a court, and lost consequently part of their title to respect. The lawyers, as I have observed above, pretended that nobility could not exist without a royal concession. They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy. The institutions of chivalry again gave rise to a vast increase of gentlemen, knighthood, on whomso-

s Nobility, to a certain degree, was communicated through the mother alone, not only by the custom of Champagne, but in all parts of France; that is, the issue were "gentilhommes du fait de leur corps." and could possess fiefs; but, says Beaumanoir, "la gentilesse par laquelle on devient chevalier doit venir de par le père," c. 45. There was a proverbial maxim in French law, rather emphatic than decent, to express the derivation of gentility from the father, and of freedom from the mother.

t Beaumanoir, c. 45; Du Cange, Dissert. 10, sur Joinville; Carpentier voc. Nobilitatio.

u [Note XII.]

v Velly, t. vi. p. 432; Du Cange and Carpentier, voce Nobilitaire, &c.; Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. i. p. 317.

ever conferred by the sovereign, being a sufficient passport to noble privileges. It was usual, perhaps, to grant previous letters of nobility to a plebeian for whom the honor of knighthood was designed.

In this noble or gentle class there were several gradations. All those in France who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of barons. These were originally the peers of the king's court; they possessed the higher territorial jurisdiction, and had the right of carrying their own banner into the field.[w] To these corresponded the Valvassores majores and Capitanei of the empire. In a subordinate class were the vassals of this high nobility, who, upon the Continent, were usually termed Vavassors—an appellation not unknown, though rare, in England.[x] The Châtelains belonged to the order of Vavassors, as they held only arriere fiefs; but, having fortified houses, from which they derived their name (a distinction very important in those times), and possessing ampler rights of territorial justice, they rose above the level of their fellows in the scale of tenure.[y] But after the personal nobility

w Beaumanoir, c. 34; Du Cange, v. Baro; Etablissemens de St. Louis, l. i. c. 24, l. ii. c. 36. The vassals of inferior lords were, however, called, improperly, Barons, both in France and England. Recueil des Historiens, t. xi. p. 300; Madox, Baronia Anglica, p. 133. In perfect strictness, those only whose immediate tenure of the crown was older than the accession of Hugh Capet were barons of France; namely, Bourbon, Coucy, and Beaujeu, or Beaujolois. It appears, however, by a register in the reign of Philip Augustus, that fifty-nine were reckoned in that class; the feudatories of the Capetian fiefs, Paris and Orleans being confounded with the original vassals of the crown. Du Cange, voc. Baro.

x Du Cange, v. Vavassor; Velly, t. vi. p. 151; Madox, Baronia Anglica, p. 135. There is, perhaps, hardly any word more loosely used than Vavassor. Bracton says, Sunt etiam Vavassores, magnæ dignitatis viri. In France and Germany they are sometimes named with much less honor. Je suis un chevalier né de cest part, de *vavasseurs et de basse gent*, says a romance. This is to be explained by the poverty to which the subdivision of fiefs reduced idle gentlemen.

Chaucer concludes his picturesque description of the franklin, in the prologue to the Canterbury Tales, thus:—"Was never such a worthy vavassor." This has perplexed some of our commentators, who, not knowing well what was meant by a franklin or by a vavassor, fancied the latter to be of much higher quality than the former. The poet, however, was strictly correct; his acquaintance with French manners showed him that the country squire, for his franklin is no other, precisely corresponded to the vavassor in France. Those who, having been deceived, by comparatively modern law-books, into a notion that the word franklin denoted but a stout yeoman, in spite of the wealth and rank which Chaucer assigns to him, and believing also, on the authority of the loose phrase in Bracton, that all vavassors were "magnæ dignitatis viri," might well be puzzled at seeing the words employed as synonyms. See Todd's Illustrations of Gower and Chaucer for an instance.

y Du Cange, v. Castellanus; Coûtumes de Poitou, tit. iii.; Loiseau Traité des Seigneuries, p. 160. Whoever had a right to a castle had la haute justice; this being so incident to the castle that it was transferred along with it. There might, however, be a Seigneur haut-justicier below the Châtelain; and a ridiculous distinction was made as to the number of posts by which their gallows might be supported. A baron's instrument of execution stood on four posts; a châtelain's on three; while the inferior lord who happened to possess la haute justice was forced to hang his subjects on a two-legged machine. Coûtumes de Poitou; Du Cange, v. Furca.

Laurière quotes from an old manuscript the following short scale of

of chivalry became the object of pride, the Vavassors who obtained knighthood were commonly styled bachelors; those who had not received that honor fell into the class of squires,[z] or damoiseaux.

It will be needless to dwell upon the condition of the inferior clergy, whether secular or professed, as it bears little upon the general scheme of polity. The prelates and abbots, however, it must be understood, were completely feudal nobles. They swore fealty for their lands to the king or other superior, received the homage of their vassals, enjoyed the same immunities, exercised the same jurisdiction, maintained the same authority, as the lay lords among whom they dwelt. Military service does not appear to have been reserved in the beneficiary grants made to cathedrals and monasteries. But when other vassals of the crown were called upon to repay the bounty of their sovereign by personal attendance in war, the ecclesiastical tenants were supposed to fall within the scope of this feudal duty, which men little less uneducated and violent than their compatriots were not reluctant to fulfil. Charlemagne exempted or rather prohibited them from personal service by several capitularies.[a] The practice, however, as everyone who has some knowledge of history will be aware, prevailed in succeeding ages. Both in national and private warfare we find very frequent mention of martial prelates.[b] But, contrary as this actual service might be to the civil as well as ecclesiastical laws, the clergy who held military fiefs were of course bound to fulfil the chief obligation of that tenure and send their vassals into the field. We have many instances of their accompanying the army, though not mixing in the conflict; and even the

ranks: Duc est la première dignité, puis comtes, puis viscomtes, et puis baron, et puis châtelain, et puis vavasseur, et puis citaen, et puis villain. Ordonnances des Rois, t. i. p. 277.

z The sons of knights, and gentlemen not yet knighted, took the appellation of squires in the twelfth century. Vaissette, Hist. de Lang. t. ii. p. 513. That of Damoiseau came into use in the thirteenth. Id. t. iii. p. 529. The latter was, I think, more usual in France. Du Cange gives little information as to the word squire. (Scutifer.) "Apud Anglos," he says, "penultima est nobilitatis descriptio, inter Equitem et Generosum. Quod et alibi in usu fuit." Squire was not used as a title of distinction in England till the reign of Edward III., and then but sparingly. Though by Henry VI.'s time it was grown more common, yet none assumed it but the sons and heirs of knights and some military men; except officers in courts of justice, who, by patent or prescription, had obtained that addition. Spelman's Posthumous Works, p. 234.

a Mably, l. i. c. 5; Baluze, t. i. pp. 410, 932, 987. Any bishop, priest, deacon, or subdeacon bearing arms was to be degraded and not even admitted to lay communion. Id. p. 932.

b One of the latest instances probably of a fighting bishop is Jean Montaigu, archbishop of Sens, who was killed at Azincourt. Monstrelet says that he was "non pas en estat pontifical, car au lieu de mitre il portoit une bacinet, pour dalmatique portoit un haubergeon, pour chasuble la piece d'acier; et au lieu de crosse, portoit une hache." Fol. 132.

parish priests headed the militia of their villages.[c] The prelates, however, sometimes contrived to avoid this military service, and the payments introduced in commutation for it, by holding lands in frank-almoigne, a tenure which exempted them from every species of obligation except that of saying masses for the benefit of the grantor's family.[d] But, notwithstanding the warlike disposition of some ecclesiastics, their more usual inability to protect the estates of their churches against rapacious neighbors suggested a new species of feudal relation and tenure. The rich abbeys elected an advocate, whose business it was to defend their interests both in secular courts and, if necessary, in the field. Pepin and Charlemagne are styled Advocates of the Roman church. This, indeed, was on a magnificent scale; but in ordinary practice the advocate of a monastery was some neighboring lord, who, in return for his protection, possessed many lucrative privileges, and very frequently considerable estates by way of fief from his ecclesiastical clients. Some of these advocates are reproached with violating their obligation, and becoming the plunderers of those whom they had been retained to defend.[e]

The classes below the gentry may be divided into freemen and villeins. Of the first were the inhabitants of chartered towns, the citizens and burghers, of whom more will be said presently. As to those who dwelt in the country, we can have no difficulty in recognizing, so far as England is concerned, the socagers, whose tenure was free, though not so noble as knight's service, and a numerous body of tenants for term of life, who formed that ancient basis of our strength, the English yeomanry. But the mere freemen are not at first sight so distinguishable in other countries. In French records and law-books of feudal times, all besides the gentry are usually confounded under the names of villeins or hommes de pooste (gens potestatis).[f] This proves the slight estimation in which all persons of ignoble birth were considered. For

[c] Daniel, Hist. de la Milice Françoise, t. i. p. 88.

[d] Du Cange, Eleesmosyna Libera; Madox, Baronia Angl. p. 115; Coke on Littleton, and other English law-books.

[e] Du Cange, v. Advocatus; a full and useful article. Recueil des Historiens, t. xi. preface, p. 184.

[f] Homo potestatis, non nobilis—Ita nuncupantur, quod in potestate domini sunt—Opponuntur viris nobilibus; apud Butilerium Consuetudinarii vocantur, Coustumiers, prestationibus scilicet obnoxii et operis. Du Cange, v. Potestas. As all these freemen were obliged, by the ancient laws of France, to live under the protection of some particular lord, and found great difficulty in choosing a new place of residence, as they were subject to many tributes and oppressive claims on the part of their territorial superiors, we cannot be surprised that they are confounded, at this distance, with men in actual servitude.

undoubtedly there existed a great many proprietors of land and others, as free, though not as privileged, as the nobility. In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal.*g* I shall quote part of a passage in Beaumanoir which points out this distinction of ranks pretty fully. "It should be known," he says,*h* "that there are three conditions of men in this world; the first is that of gentlemen; and the second is that of such as are naturally free, being born of a free mother. All who have a right to be called gentlemen are free, but all who are free are not gentlemen. Gentility comes by the father, and not by the mother; but freedom is derived from the mother only; and whoever is born of a free mother is himself free, and has free power to do anything that is lawful." *i*

In every age and country until times comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind. We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome when the importunate recollection occurs to us of the tasks which might be enjoined, and the punishments which might be inflicted, without control either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand. A similar, though less powerful, feeling will often force itself on the mind when we read the history of the middle ages. The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred not only by captivity, but by crimes, by debt, and especially by loss in gaming. When they invaded the Roman empire they found the same condition established in all its provinces. Hence, from the beginning of the era now under review, servitude, under somewhat different modes, was extremely common. There is some difficulty in ascertaining its varieties and stages. In the Salic laws, and in the Capitularies, we read not only of Servi, but of Tributarii, Lidi, and Coloni, who were cultivators of the earth and subject to residence upon their lord's estate, though not destitute of property or civil rights.*j* Those who appertained to the

g Heeren, Essai sur les Croisades, p. 122.

h Coûtumes de Beauvoisis, c. 45, p. 256.

i [Note XIII.]

j These passages are too numerous for reference. In a very early charter in Martenne's Thesaurus Anecdotorum, t.

demesne lands of the crown were called Fiscalini. The composition for the murder of one of these was much less than that for a freeman.[k] The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive, much less than it afterwards became. Property was for the most part in small divisions, and a Frank who could hardly support his family upon a petty allodial patrimony was not likely to encumber himself with many servants. But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent. Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered.[l] Even where this was not the case, yet, as the labor either of artisans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread.[m] In seasons also of famine, and they were not infrequent, many freemen sold themselves to slavery. A capitulary of Charles the Bald in 864 permits their redemption at an equitable price.[n] Others became slaves, as more fortunate men became vassals, to a powerful lord, for the sake of his protection. Many were reduced into this state through inability to pay those pecuniary compositions for offences which were numerous and sometimes heavy in the barbarian codes of law; and many more by neglect of attendance on military expeditions of the king, the penalty of which was a fine called Heribann, with the alternative of perpetual servitude.[o] A source of loss of liberty which may strike us as more extraordinary was superstition; men were infatuated enough to surrender themselves, as well as their properties, to churches and monasteries, in return for

i. p. 20, lands are granted, cum hominibus ibidem permanentibus, quos *colonario ordine vivere* constituimus. Men of this class were called, in Italy, Aldiones. A Lombard capitulary of Charlemagne says, Aldiones eâ lege vivunt in Italiâ sub servitute dominorum suorum, quâ Fiscalini, vel Lidi vivunt in Francia. Muratori, Dissert. 14. [Note XIV.]

k Originally it was but 45 solidi (Leges Salicæ, c. 43), but Charlemagne raised it to 100. Baluzii Capitularia, p. 402. There are several provisions in the laws of this great and wise monarch in favor of liberty. If a lord claimed any one either as his villein or slave (colonus sive servus), who had escaped beyond his territory, he was not to be given up till strict inquiry had been made in the place to which he was asserted to belong, as to his condition, and that of his family: p. 400. And if the villein showed a charter of enfranchisement, the proof of its forgery was to lie upon the lord. No man's liberty could be questioned in the Hundred-court.

l Montesquieu ascribes the increase of personal servitude in France to the continued revolts and commotions under the two first dynasties, l. xxx. c. 11.

m Du Cange, v. Obnoxatio.

n Baluzii Capitularia. The Greek traders purchased famished wretches on the coasts of Italy, whom they sold to the Saracens.—Muratori, Annalia d'Italia, A.D. 785. Much more would persons in this extremity sell themselves to neighboring lords.

o Du Cange, Heribannum. A full heribannum was 60 solidi; but it was sometimes assessed in proportion to the wealth of the party.

such benefits as they might reap by the prayers of their new masters.[p]

The characteristic distinction of a villein was his obligation to remain upon his lord's estate. He was not only precluded from selling the lands upon which he dwelt, but his person was bound, and the lord might reclaim him at any time, by suit in a court of justice, if he ventured to stray. But, equally liable to this confinement, there were two classes of villeins, whose condition was exceedingly different. In England, at least from the reign of Henry II., one only, and that the inferior species, existed; incapable of property, and destitute of redress, except against the most outrageous injuries.[q] The lord could seize whatever they acquired or inherited, or convey them, apart from the land, to a stranger. Their tenure bound them to what were called villein services, ignoble in their nature and indeterminate in their degree: the felling of timber, the carrying of manure, the repairing of roads for their lord, who seems to have possessed an equally unbounded right over their labor and its fruits. But by the customs of France and Germany, persons in this abject state seem to have been called serfs, and distinguished from villeins, who were only bound to fixed payments and duties in respect of their lord, though, as it seems, without any legal redress if injured by him.[r] "The third estate of men," says Beaumanoir, in the passage above quoted, "is that of such as are not free; and these are not all of one condition, for some are so subject to their lord that he may take all they have, alive or dead, and imprison them, whenever he pleases, being accountable to none but God; while others are treated more gently, from whom the lord can take nothing but customary payments, though at their death all they have escheats to him."[s]

[p] Beaumanoir, c. 45. [Note XV.]

[q] Littleton, l. ii. c. 11. Non potest aliquis (says Glanvil), in villenagio positus, libertatem suam propriis denariis suis quærere—quia omnia catalla cujuslibet nativi intelliguntur esse in potestate domini sui.—l. v. c. 5.

[r] This is clearly expressed in a French law-book of the thirteenth century, the Conseil of Pierre des Fontaines, quoted by Du Cange, voc. Villanus. Et sache bien que selon Dieu tu n'as mie pleniere poesté sur ton vilain. Dont se tu prens du sien fors les droites redevances que te doit, tu les prens contre Dieu, et sur le peril de t'ame et come robierres. Et ce qu'on dit toutes les choses que vilains a, sont son Seigneur, c'est voir a garder. Car s'il estoient son seigneur propre, il n'avoit nule difference entre serf et vilain, mais par notre usage n'a entre toi et ton vilain juge fors Dieu, tant com il est tes couchans et tes levans, s'il n'a autre loi vers toi fors la commune. This seems to render the distinction little more than theoretical.

[s] Beaumanoir, c. 45; Du Cange, Villanus, Servus, and several other articles. Schmidt, Hist. des Allemands, t. ii. p. 171, 435. By a law of the Lombards, a free woman who married a slave might be killed by her relations, or sold; if they neglected to do so, the fisc might claim her as its own.—Muratori, Dissert. 14. In France also she

Under every denomination of servitude, the children followed their mother's condition, except in England, where the father's state determined that of the children; on which account bastards of female villeins were born free, the law presuming the liberty of their father.[t] The proportion of freemen, therefore, would have been miserably diminished if there had been no reflux of the tide which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two states of mankind. This, as is well known, was an exceedingly common practice with the Romans; and is mentioned, with certain ceremonies prescribed, in the Frankish and other early laws. The clergy, and especially several popes, enforced it as a duty upon laymen; and inveighed against the scandal of keeping Christians in bondage.[u] As society advanced in Europe, the manumission of slaves grew more frequent.[v] By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property and thus purchase their own redemption. Even where they had no legal title to property, it was accounted inhuman to divest them of their little possession (the peculium of Roman law), nor was their poverty, perhaps, less tolerable, upon the whole, than that of the modern peasantry in most countries of Europe. It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights;[w] he might inherit, pur-

was liable to be treated as a slave.—Marculfi Formulæ, l. ii. 29. Even in the twelfth century it was the law of Flanders that whoever married a villein became one himself after he had lived with her a twelvemonth—Recueil des Historiens, t. xiii. p. 350. And, by a capitulary of Pepin, if a man married a villein believing her to be free, he might repudiate her and marry another.—Baluze, p. 181.

Villeins themselves could not marry without the lord's license, under penalty of forfeiting their goods, or at least of a mulct.—Du Cange, v. Forismaritagium. This seems to be the true origin of the famous mercheta mulierum, which has been ascribed to a very different custom.—Du Cange, v. Mercheta Mulierum; Dalrymple's Annals of Scotland, vol. i. p. 312; Archæologia, vol. xii. p. 31.

t Littleton, s. 188. Bracton indeed holds that the spurious issue of a neif, though by a free father, should be a villein, quia sequitur conditionem matris, quasi vulgo conceptus, l. i. c. 6. But the laws under the name of Henry I. declare that a son should follow his father's condition; so that this peculiarity is very ancient in our law.—Leges Hen. I. c. 75 and 77.

u Enfranchisements by testament are very common. Thus in the will of Seniofred, Count of Barcelona, in 966, we find the following piece of corrupt Latin: De ipsos servos meos et ancillas, illi qui traditi fuerunt faciatis illos libros propter remedium animæ meæ; et alli qui fuerunt de parentorum meorum remaneant ad fratres meos.—Marca Hispanica, p. 887.

v No one could enfranchise his villein without the superior lord's consent; for this was to diminish the value of his land, *apeticer le fief*.—Beaumanoir, c. 15. Etablissemens de St. Louis, c. 34. It was necessary, therefore, for the villein to obtain the suzerain's confirmation; otherwise he only changed masters and escheated, as it were, to the superior; for the lord who had granted the charter of franchise was *estopped* from claiming him again.

w Littleton, s. 189. Perhaps this is not applicable to other countries. Villeins were incapable of being received as witnesses against freemen.—Recueil

chase, sue in the courts of law; though, as defendant in a real action or suit wherein land was claimed, he might shelter himself under the plea of villenage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement; especially in Italy, where the cities and petty states had often occasion to defend themselves with their own population; and in peace the industry of free laborers must have been found more productive and better directed. Hence the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease; early in the fifteenth a writer quoted by Muratori speaks of them as no longer existing.[x] The greater part of the peasants in some countries of Germany had acquired their liberty before the end of the thirteenth century; in other parts, as well as in all the northern and eastern regions of Europe, they remained in a sort of villenage till the present age. Some very few instances of predial servitude have been discovered in England so late as the time of Elizabeth,[y] and perhaps they might be traced still lower. Louis Hutin, in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example for other lords possessing villeins to follow.[z] Philip the Long renewed the same edict three years afterwards; a proof that it had not been carried into execution.[a] Indeed there are letters of the former prince, wherein, considering that many of his subjects are not apprised of the extent of the benefit conferred upon them, he directs his officers to tax them as high as their fortunes can well bear.[b]

des Historiens, t. xiv. préface, p. 65. There are some charters of kings of France admitting the serfs of particular monasteries to give evidence, or to engage in the judicial combat, against freemen.—Ordonnances des Rois, t. i. p. 3. But I do not know that their testimony, except against their lord, was ever refused in England; their state of servitude not being absolute, like that of negroes in the West Indies, but particular and relative, as that of an apprentice or hired servant. This subject, however, is not devoid of obscurity.

x Dissert. 14.

y Barrington's Observations on the Ancient Statutes, p. 274.

z Ordonnances des Rois, t. i. p. 583.

a Id. p. 653.

b Velly, t. viii. p. 38. Philip the Fair had emancipated the villeins in the royal domains throughout Languedoc, retaining only an annual rent for their lands, which thus became *censives*, or *emphyteuses*. It does not appear by the charter that he sold this enfranchisement, though there can be little doubt about it. He permitted his vassals to follow the example.—Vaissette, Hist. de Languedoc, t. iv.; Appendix, p. 3, 12.

It is not generally known, I think, that predial servitude was not abolished in all parts of France till the revolution. In some places, says Pasquier, the peasants are taillables à volonté, that is, their contribution is not permanent, but assessed by the lord with the advice of prud' hommes, resseants sur les lieux, according to the peasant's ability. Oth-

It is deserving of notice that a distinction existed from very early times in the nature of lands, collateral, as it were, to that of persons. Thus we find mansi ingenui and mansi serviles in the oldest charters, corresponding, as we may not unreasonably conjecture, to the liberum tenementum and villenagium, or freehold and copyhold of our own law. In France, all lands held in *roture* appear to be considered as villein tenements, and are so termed in Latin, though many of them rather answer to our socage freeholds. But although originally this servile quality of lands was founded on the state of their occupiers, yet there was this particularity, that lands never change their character along with that of the possessor; so that a nobleman might, and often did, hold estates in roture, as well as a roturier acquire a fief. Thus in England the terre tenants in villenage, who occur in our old books, were not villeins, but freemen holding lands which had been from time immemorial of a villein quality.

At the final separation of the French from the German side of Charlemagne's empire by the treaty of Verdun in 843, there was perhaps hardly any difference in the constitution of the two kingdoms. If any might be conjectured to have existed, it would be a greater independence and fuller rights of election in the nobility and people of Germany. But in the lapse of another century France had lost all her political unity, and her kings all their authority; while the Germanic empire was entirely unbroken under an effectual, though not absolute, con-

ers pay a fixed sum. Some are called serfs de poursuite, who cannot leave their habitations, but may be followed by the lord into any part of France for the taille upon their goods. This was the case in part of Champagne and the Nivernois. Nor could these serfs, or gens de mainmorte, as they were sometimes called, be manumitted without letters-patent of the king, purchased by a fine.—Recherches de la France, l. iv. c. 5. Dubos informs us that, in 1615, the Tiers Etat prayed the king to cause all serfs (*hommes de pooste*) to be enfranchised on paying a composition; but this was not complied with, and they existed in many parts when he wrote.—Histoire, Critique, t. iii. p. 298. Argou, in his Institutions du Droit François, confirms this, and refers to the customaries of Nivernois and Vitry, l. i. c. 1. And M. de Bréquigny, in his preface to the twelfth volume of the collection of Ordonnances, p. 22, says that throughout almost the whole jurisdiction of the parliament of Besançon the peasants were attached to the soil, not being capable of leaving it without the lord's consent; and that in some places he even inherited their goods in exclusion of the kindred. I recollect to have read in some part of Voltaire's correspondence an anecdote of his interference, with that zeal against oppression which is the shining side of his moral character, in behalf of some of these wretched slaves of Franche-Comté.

About the middle of the fifteenth century, some Catalonian serfs who had escaped into France being claimed by their lords, the parliament of Toulouse declared that every man who entered the kingdom *en criant France* should become free. The liberty of our kingdom is such, says Mezeray, that its air communicates freedom to those who breathe it, and our kings are too august to reign over any but freemen. Villaret, t. xv. p. 348. How much pretence Mezeray had for such a flourish may be decided by the former part of this note.

trol of its sovereign. No comparison can be made between the power of Charles the Simple and Conrad the First, though the former had the shadow of an hereditary right, and the latter was chosen from among his equals. A long succession of feeble princes or usurpers, and destructive incursions of the Normans, reduced France almost to a dissolution of society; while Germany, under Conrad, Henry, and the Othos, found their arms not less prompt and successful against revolted vassals than external enemies. The high dignities were less completely hereditary than they had become in France; they were granted, indeed, pretty regularly, but they were solicited as well as granted; while the chief vassals of the French crown assumed them as patrimonial sovereignties, to which a royal investiture gave more of ornament than sanction.

In the eleventh century these imperial prerogatives began to lose part of their lustre. The long struggles of the princes and clergy against Henry IV. and his son, the revival of more effective rights of election on the extinction of the house of Franconia, the exhausting contests of the Swabian emperors in Italy, the intrinsic weakness produced by a law of the empire, according to which the reigning sovereign could not retain an imperial fief more than a year in his hands, gradually prepared that independence of the German aristocracy which reached its height about the middle of the thirteenth century. During this period the French crown had been insensibly gaining strength; and as one monarch degenerated into the mere head of a confederacy, the other acquired unlimited power over a solid kingdom.

It would be tedious, and not very instructive, to follow the details of German public law during the middle ages; nor are the more important parts of it easily separable from civil history. In this relation they will find a place in a subsequent chapter of the present work. France demands a more minute attention; and in tracing the character of the feudal system in that country, we shall find ourselves developing the progress of a very different polity.

To understand in what degree the peers and barons of France, during the prevalence of feudal principles, were independent of the crown, we must look at their leading privileges. These may be reckoned: 1. The right of coining money; 2. That of waging private war; 3. The exemption

from all public tributes, except the feudal aids; 4. The freedom from legislative control; and, 5. The exclusive exercise of original judicature in their dominions. Privileges so enormous, and so contrary to all principles of sovereignty, might lead us, in strictness, to account France rather a collection of states, partially allied to each other, than a single monarchy.

1. Silver and gold were not very scarce in the first ages of the French monarchy; but they passed more by weight than by tale. A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges.[c] In some cities of France money appears to have been coined by private authority before the time of Charlemagne; at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint. His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp. About the beginning of the tenth century, however, the lords, among their other assumptions of independence, issued money with no marks but their own.[d] At the accession of Hugh Capet as many as a hundred and fifty are said to have exercised this power. Even under St. Louis it was possessed by about eighty, who, excluding as far as possible the royal coin from circulation, enriched themselves at their subjects' expense by high duties (seigniorages), which they imposed upon every new coinage, as well as by debasing its standard.[e] In 1185 Philip Augustus requests the abbot of Corvey, who had desisted from using his own mint, to let the royal money of Paris circulate through his territories, promising that, when it should please the abbot to coin money afresh for himself, the king would not oppose its circulation.[f]

Several regulations were made by Louis IX. to limit, as far as lay in his power, the exercise of this baronial privilege,

c The practice of keeping fine gold and silver uncoined prevailed among private persons, as well as in the treasury, down to the time of Philip the Fair. Nothing is more common than to find, in the instruments of earlier time, payments or fines stipulated by weight of gold or silver. Le Blanc therefore thinks that little money was coined in France, and that only for small payments.—Traité des Monnoyes. It is curious that, though there are many gold coins extant of the first race of kings, yet few or none are preserved of the second or third before the reign of Philip the Fair.—Du Cange, v. Moneta.

d Vaissette, Hist. de Languedoc, t. ii. p. 110; Rec. des Historiens, t. xi. préf. p. 180; Du Cange, v. Moneta.

e Le Blanc, Traité des Monnoyes, p. 91.

f Du Cange, voc. Moneta; Velly, Hist. de France, t. ii. p. 93; Villaret, t. xiv. p. 200.

and, in particular, by enacting that the royal money should circulate in the domains of those barons who had mints, concurrently with their own, and exclusively within the territories of those who did not enjoy that right. Philip the Fair established royal officers of inspection in every private mint. It was asserted in his reign, as a general truth, that no subject might coin silver money.*g* In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called (moneta nigra), into which little entered but copper. Silver, however, and even gold, were coined by the dukes of Brittany so long as that fief continued to exist. No subjects ever enjoyed the right of coining silver in England without the royal stamp and superintendence *h*—a remarkable proof of the restraint in which the feudal aristocracy was always held in that country.

2. The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the control of their imperfect arrangements of polity. It seems to them no part of the social compact to sacrifice the privilege which nature has placed in the arm of valor. Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction. The earlier object accordingly of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquillity as the prevention of crime. Such were the weregilds of the barbaric codes, which, for a different purpose, I have already mentioned.*i* But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (faida) were perpetually breaking out, and many of Charlemagne's capitularies are directed against them. After his time all

g Du Cange, v. Moneta. The right of debasing the coin was also claimed by this prince as a choice flower of his crown. Item, abaisser et amenuser la monnoye est privilege especial au roy de son droit royal, si que à luy appartient, et à non autre, et encore en un seul cas, c'est a scavoir en necessité, et lors ne vient pas le ganeg, ne convertit en son profit especial, mais en profit et en la defence du commun. This was in a process commenced by the king's procureur-general against the Comte de Nevers, for defacing his coin.—Le Blanc, Traité des Monnoyes, p. 92. In many places the lord took a sum from his tenants every three years, under the name of monetagium or focagium, in lieu of debasing his money. This was finally abolished in 1830.—Du Cange, v. Monetagium.

h I do not extend this to the fact; for in the anarchy of Stephen's reign both bishops and barons coined money for themselves.—Hoveden, p. 490.

i The antiquity of compositions for murder is illustrated by Iliad Σ, 498, where, in the description of the shield of Achilles, two disputants are represented wrangling before the judge for the weregild or price of blood; *εἵνεκα ποινῆς ἀνδρὸς ἀποφθιμένου*

hope of restraining so inveterate a practice was at an end; and every man who owned a castle to shelter him in case of defeat, and a sufficient number of dependents to take the field, was at liberty to retaliate upon his neighbors whenever he thought himself injured. It must be kept in mind that there was, frequently, either no jurisdiction to which he could appeal, or no power to enforce its awards; so that we may consider the higher nobility of France as in a state of nature with respect to each other, and entitled to avail themselves of all legitimate grounds of hostility. The right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by Charles VI.; but a few vestiges of its practice may be found still later.*j*

3. In the modern condition of governments, taxation is a chief engine of the well-compacted machinery which regulates the system. The payments, the prohibitions, the licenses, the watchfulness of collection, the evasions of fraud, the penalties and forfeitures, that attend a fiscal code of laws, present continually to the mind of the most remote and humble individual the notion of a supreme, vigilant, and coercive authority. But the early European kingdoms knew neither the necessities nor the ingenuity of modern finance. From their demesne lands the kings of France and Lombardy supplied the common expenses of a barbarous court. Even Charlemagne regulated the economy of his farms with the minuteness of a steward, and a large portion of his capitularies are directed to this object. Their actual revenue was chiefly derived from free gifts, made, according to an ancient German custom, at the annual assemblies *k* of the nation, from amercements paid by allodial proprietors for default of military service, and from the freda, or fines, accruing to the judge out of compositions for murder.*l* These amounted to one-third of the whole weregild; one-third

j The subject of private warfare is treated so exactly and perspicuously by Robertson, that I should only waste the reader's time by dwelling so long upon it as its extent and importance would otherwise demand.—See Hist. of Charles V. vol. i. note 21. Few leading passages in the monuments of the middle ages relative to this subject have escaped the penetrating eye of that historian; and they are arranged so well as to form a comprehensive treatise in small compass. I know not that I could add any much worthy of notice, unless it be the following:—In the treaty between Philip Augustus and Richard Cœur de Lion (1194), the latter refused to admit the insertion of an article that none of the barons of either party should molest the other; lest he should infringe the customs of Poitou and his other dominions, in quibus consuetum erat ab antiquo, ut magnates causas proprias invicem gladiis allegarent.—Hoveden, p. 741 (in Saville, Script. Anglic.).

k Du Cange, Dissertation quatrième sur Joinville.

l Mably, l. i. c. 2, note 3; Du Cange voc. Heribannum, Fredum.

of this was paid over by the count to the royal exchequer. After the feudal government prevailed in France, and neither the heribannum nor the weregild continued in use, there seems to have been hardly any source of regular revenue besides the domanial estates of the crown; unless we may reckon as such, that during a journey the king had a prescriptive right to be supplied with necessaries by the towns and abbeys through which he passed; commuted sometimes into petty regular payments, called droits de gist et de chevauché.[m] Hugh Capet was nearly indigent as King of France, though, as Count of Paris and Orleans, he might take the feudal aids and reliefs of his vassals. Several other small emoluments of himself and his successors, whatever they may since have been considered, were in that age rather seigniorial than royal. The rights of toll, of customs, of alienage (aubaine), generally even the regale or enjoyment of the temporalities of vacant episcopal sees and other ecclesiastical benefices,[n] were possessed within their own domains by the great feudatories of the crown. They, I apprehend, contributed nothing to their sovereign, not even those aids which the feudal customs enjoined.[o]

The history of the royal revenue in France is, however, too important to be slightly passed over. As the necessities of government increased, partly through the love of magnificence and pageantry introduced by the crusades and the temper of chivalry, partly in consequence of employing hired troops instead of the feudal militia, it became impossible to defray its expenses by the ordinary means. Several devices, therefore, were tried, in order to replenish the exchequer. One of these was by extorting money from the Jews. It is almost incredible to what a length this was carried. Usury, forbidden by law and superstition to Christians, was confined to this industrious and covetous people.[p] It is now no secret that all regulations interfering with the interest of money render its terms more

[m] Velly, t. ii. p. 329; Villaret, t. xiv. p. 174-195; Recueil des Historiens, t. xiv. préface, p. 37. The last is a perspicuous account of the royal revenue in the twelfth century. But far the most luminous view of that subject, for the three next ages, is displayed by M. de Pastoret in his prefaces to the fifteenth and sixteenth volumes of the Ordonnances des Rois.

[n] The Duke of Burgundy and Count of Champagne did not possess the regale. But it was enjoyed by all the other peers; by the dukes of Normandy, Guienne, and Brittany; the counts of Toulouse, Poitou, and Flanders.—Mably, l. iii. c. 4; Recueil des Historiens, t. ii. p. 229, and t. xiv. p. 53; Ordonnances des Rois, t. i. p. 621.

[o] I have never met with any instance of a relief, aid, or other feudal contribution paid by the vassals of the French crown; but in this negative proposition it is possible that I may be deceived.

[p] The Jews were celebrated for usury as early as the sixth century.—Greg. Turon. l. iv. c. 12, and l. vii. c. 23.

rigorous and burdensome. The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors. If an historian of Philip Augustus may be believed, they possessed almost one-half of Paris. Unquestionably they must have had support both at the court and in the halls of justice. The policy of the kings of France was to employ them as a sponge to suck their subjects' money, which they might afterwards express with less odium than direct taxation would incur. Philip Augustus released all Christians in his dominions from their debts to the Jews, reserving a fifth part to himself.[q] He afterwards expelled the whole nation from France. But they appear to have returned again—whether by stealth, or, as is more probable, by purchasing permission. St. Louis twice banished and twice recalled the Jews. A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance, and a talent of accumulating riches which kept pace with their plunderers; till new schemes of finance supplying the turn, they were finally expelled under Charles VI., and it was not till long afterwards that they obtained any legal establishment in France.[r]

A much more extensive plan of rapine was carried on by lowering the standard of coin. Originally the pound, a money of account, was equivalent to twelve ounces of silver;[s] and divided into twenty pieces of coin (sous), each equal consequently to nearly three shillings and four pence of modern English money.[t] At the revolution the money of France had been depreciated in the proportion of seventy-three to one, and the sol was about equal to an English halfpenny. This was the effect of a long continuance of fraudulent and arbitrary government. The abuse began under Philip I. in 1103, who alloyed his silver coin with a third of copper. So good an

q Rigord, in Du Chesne, Hist. Franc. Script. t. iii. p. 8.

r Villaret, t. ix. p. 433. Metz contained, and I suppose still contains, a great many Jews; but Metz was not part of the ancient kingdom.

s In every edition of this work, till that of 1846, a strange misprint has appeared of twenty instead of twelve ounces, as the division of the pound of silver. Most readers will correct this for themselves; but it is more material to observe that, according to what we find in the Mémoires de l'Acad. des Inscriptions (Nouvelle Série), vol. xiv. p. 234, the pound in the time of Charlemagne was not of 12 ounces, but of 13⅓. We must, therefore, add one-ninth to the value of the sol, so long as this continued to be the case. I do not know the proofs upon which this assertion rests; but the fact seems not to have been much observed by those who had previously written upon the subject.

t Besides this silver coin there was a golden sol, worth forty pence. Le Blanc thinks the solidi of the Salic law and capitularies mean the latter piece of money. The denarius, or penny, was worth two sous six deniers of modern French coin.

example was not lost upon subsequent princes; till, under St. Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin. Nevertheless these changes seem hitherto to have produced no discontent; whether it were that a people neither commercial nor enlightened did not readily perceive their tendency; or, as has been ingeniously conjectured, that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the crusades, with which they were about contemporaneous.[u] But the rapacity of Philip the Fair kept no measures with the public; and the mark in his reign had become equal to eight livres, or a hundred and sixty sous of money. Dissatisfaction, and even tumults, arose in consequence, and he was compelled to restore the coin to its standard under St. Louis.[v] His successors practised the same arts of enriching their treasury; under Philip of Valois the mark was again worth eight livres. But the film had now dropped from the eyes of the people; and these adulterations of money, rendered more vexatious by continued recoinages of the current pieces, upon which a fee was extorted by the moneyers, showed in their true light as mingled fraud and robbery.[w]

These resources of government, however, by no means superseded the necessity of more direct taxation. The kings of France exacted money from the roturiers, and particularly the inhabitants of towns, within their domains. In this they only acted as proprietors, or suzerains; and the barons took the same course in their own lands. Philip Augustus first ventured

[u] Villaret, t. xiv. p. 198. The price of commodities, he asserts, did not rise till the time of St. Louis. If this be said on good authority it is a remarkable fact; but in England we know very little of prices before that period, and I doubt if their history has been better traced in France.

[v] It is curious, and not perhaps unimportant, to learn the course pursued in adjusting payments upon the restoration of good coin, which happened pretty frequently in the fourteenth century, when the States-General, or popular clamor, forced the court to retract its fraudulent policy. Le Blanc has published several ordinances nearly to the same effect. One of Charles VI. explains the method adopted rather more fully than the rest. All debts incurred since the depreciated coin began to circulate were to be paid in that coin, or according to its value. Those incurred previously to its commencement were to be paid according to the value of the money circulating at the time of the contract. Item, que tous les vrais emprunts faits en deniers sans fraude se payeront en telle monnoye comme l'on aura emprunté, si elle a plein cours au temps du payement, et sinon, ills payeront en monnoye coursable, lors selon la valeur et le prix du marc d'or ou d'argent: p. 32.

[w] Continuator Gul. de Nangis in Spicilegio, t. iii. For the successive changes in the value of French coins the reader may consult Le Blanc's treatise, or the Ordonnances des Rois; also a dissertation by Bonamy in the Mém. de l'Acad. des Inscriptions, t. xxxii.; or he may find a summary view of them in Du Cange, v. Moneta. The bad consequences of these innovations are well treated by M. de Pastoret, in his elaborate preface to the sixteenth volume of the Ordonnances des Rois, p. 40.

upon a stretch of prerogative, which, in the words of his biographer, disturbed all France. He deprived by force, says Rigord, both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods.[x] Such arbitrary taxation of the nobility, who deemed that their military service discharged them from all pecuniary burdens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses. Upon obtaining any contribution, it was usual to grant letters-patent, declaring that it had been freely given, and should not be turned into precedent in time to come. Several of these letters-patent of Philip the Fair are extant, and published in the general collection of ordinances.[y] But in the reign of this monarch a great innovation took place in the French constitution, which, though it principally affected the method of levying money, may seem to fall more naturally under the next head of consideration.

4. There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation. We find it difficult to conceive the existence of a political society, nominally one kingdom and under one head, in which, for more than three hundred years, there was wanting the most essential attribute of government. It will be requisite, however, to take this up a little higher, and inquire what was the original legislature of the French monarchy.

Arbitrary rule, at least in theory, was uncongenial to the character of the northern nations. Neither the power of making laws, nor that of applying them to the circumstances of particular cases, was left at the discretion of the sovereign. The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence, and nominally at least with the consent, of the multitude.[z] Frequent

[x] Du Chesne, t. v. p. 43.

[y] Fasons scavoir et recognoissons que le derniere subvention que ils nous ont faite (les barons, vassaux, et nobles d'Auvergne) de pure grace sans ce que ils y fussent tenus que de grace: et voulons et leur octroyones que les autres subventions que ils nous ont faites ne leur facent nul prejudice, es choses esquelles ils n'étoient tenus, ne par ce nul nouveau droit ne nous soit acquis ne amenuisié.—Ordonnance de 1304, apud Mably, l. iv. c. 3, note 5. See other authorities in the same place.

[z] Liutprand, King of the Lombards, says that his laws sibi placuisse unà cum omnibus judicibus de Austriæ et Neustriæ partibus, et de Tusciæ finibus, cum reliquis fidelibus meis Langobardis, et omni populo assistente.—Muratori, Dissert. 22.

mention is made of similar public meetings in France by the historians of the Merovingian kings, and still more unequivocally by their statutes.[a] These assemblies have been called parliaments of the Champ de Mars, having originally been held in the month of March. But they are supposed by many to have gone much into disuse under the later Merovingian kings. That of 615, the most important of which any traces remain, was at the close of the great revolution which punished Brunehaut for aspiring to despotic power. Whether these assemblies were composed of any except prelates, great landholders, or what we may call nobles, and the Antrustiones of the king, is still an unsettled point. Some have even supposed, since bishops are only mentioned by name in the great statute of Clotaire II. in 615, that they were then present for the first time; and Sismondi, forgetting this fact, has gone so far as to think that Pepin first admitted the prelates to national councils.[b] But the constitutions of the Merovingian kings frequently bear upon ecclesiastical regulations, and must have been prompted at least by the advice of the bishops. Their influence was immense; and though the Romans generally are not supposed to have been admitted by right of territorial property to the national assemblies, there can be no improbability in presuming that the chiefs of the church, especially when some of them were barbarians, stood in a different position. We know this was so at least in 615, and nothing leads to a conclusion that it was for the first time.

It is far more difficult to determine the participation of the Frank people, the allodialists or *Rachimburgii*, in these assemblies of the Field of March. They could not, it is said, easily have repaired thither from all parts of France. But while the monarchy was divided, and all the left bank of the Loire, in

a Mably, l. i. c. i. note 1; Lindebrog. Codex Legum Antiquarum, p. 363, 369. The following passage, quoted by Mably (c. ii. n. 6), from the preamble of the revised Salic law under Clotaire II., is explicit: Temporibus Clotairii regis unà cum principibus suis, id est 33 episcopis et 34 ducibus et 79 comitibus, *vel* cæterò populo constituta est. A remarkable instance of the use of *vel* instead of *et*, which was not uncommon, and is noticed by Du Cange, under the word Vel. Another proof of it occurs in the very next quotation of Mably from the edict of 615: cum pontificibus, *vel* cum magnis viris optimatibus.

b Voltaire (Essai sur l'Histoire Universelle) ascribes this to the elder Pepin, surnamed Héristal, and quotes the Annals of Metz for 692; but neither under that year nor any other do I find a word to the purpose. Yet he pompously announces this as "an epoch not regarded by historians. but that of the temporal power of the church in France and Germany." Voltaire knew but superficially the early French history, and amused himself by questioning the most public as well as probable facts, such as the death of Brunehaut. The compliment which Robertson has paid to Voltaire's historical knowledge is much exaggerated relatively to the mediæval period; the latter history of his country he possessed very well.

consequence of the paucity of Franks settled there, was hardly connected politically with any section of it, there does not seem an improbability that the subjects of a king of Paris or Soissons might have been numerously present in those capitals. It is generally allowed that they attended with annual gifts to their sovereign; though perhaps these were chiefly brought by the beneficiary tenants and wealthy allodialists. We certainly find expressions, some of which I have quoted, indicating a popular assent to the resolutions taken, or laws enacted, in the Field of March. Perhaps the most probable hypothesis may be that the presence of the nation was traditionally required in conformity to the ancient German usage, which had not been formally abolished; while the difficulty of prevailing on a dispersed people to meet every year, as well as the enhanced influence of the king through his armed Antrustiones, soon reduced the freemen to little more than spectators from the neighboring districts. We find indeed that it was with reluctance, and by means of coercive fines, that they were induced to attend the *mallus* of their count for judicial purposes.*c*

Although no legislative proceedings of the Merovingian line are extant after 615, it is intimated by early writers that Pepin Héristal and his son Charles Martel restored the national council after some interruption; and if the language of certain historians be correct, they rendered it considerably popular.*d*

Pepin the younger, after his accession to the throne, changed the month of this annual assembly from March to May; and we have some traces of what took place at eight sessions during his reign.*e* Of his capitularies, however, one only is said to be made *in generali populi conventu;* the rest are enacted in synods of bishops, and all without exception relate merely to ecclesiastical affairs.*f* And it must be owned that, as in those

c Mably generally strives to make the most of any vestige of popular government, and Sismondi is not exempt from a similar bias. He overrates the liberties of the Franks. "Leurs ducs et leurs comtes étaient électifs: leurs généraux étaient choisis par les soldats, leurs grands juges ou maires par les hommes libres" (vol. ii. p. 87). But no part of these privileges can be inferred from the existing histories or other documents. The dukes and counts were, as we find by Marculfus and other evidence, solely appointed by the crown. A great deal of personal liberty may have been preserved by means of the local assemblies of the Franks; but we find in the general government only the preponderance of the kings during one period, and that of the aristocracy during another.

d The first of these Austrasian dukes, say the Annals of Metz, "Singulis annis in Kalendis Martii generale cum omnibus Francis, secundum priscorum consuetudinem, concilium agebat." The second, according to the biographer of St. Salvian—"jussit campum magnum parari, sicut mos erat Francorum. Venerunt autem optimates et magistratus, omnisque populus." See the quotations in Guizot (Essais sur l'Hist. de France, p. 321).

e Essais sur l'Hist. de France, p. 324.

f Rec. des Hist. v. 637.

of the first dynasty, we find generally mention of the optimates who met in these conventions, but rarely any word that can be construed of ordinary freemen.

Such, indeed, is the impression conveyed by a remarkable passage of Hincmar, Archbishop of Rheims, during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince. Two assemblies (placita) were annually held. In the first, all regulations of importance to the public weal for the ensuing year were enacted; and to this, he says, the whole body of clergy and laity repaired; the greater, to deliberate upon what was fitting to be done; and the less, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors.*g* In the second annual assembly the chief men and officers of state were alone admitted, to consult upon the most urgent affairs of government. They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king. The clergy and nobles met in separate chambers, though sometimes united for the purposes of deliberation. In these assemblies, principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted. And though it would contradict the testimony just adduced from Hincmar, to suppose that the lesser freeholders took a very effective share in public councils, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded. It is continually expressed in his capitularies and those of his family that they were enacted by general consent.*h* In one of Louis the Debonair, we even trace the

g Consuetudo tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spatium; quod ordinatum nullus eventus rerum, nisi summa necessitas, quæ similiter toti regno incumbebat, mutabat. In quo placito generalitas universorum majorum, tam clericorum quam laicorum, conveniebat; seniores propter consilium ordinandum; minores, propter idem consilium suscipiendum, et interdum pariter tractandum, et non ex potestate, sed ex proprio mentis intellectu vel sententiâ, confirmandum. Hincmar, Epist. 5, de ordine palatii. I have not translated the word majorum in the above quotation, not apprehending its sense. [Note XVI.]

h Capitula quæ præterito anno legi Salicæ cum omnium consensu addenda esse consuimus. (A.D. 801.) Ut populus interrogetur de capitulis quæ in lege noviter addita sunt, et postquam omnes consenserint, subscriptiones et manufirmationes suas in ipsis capitulis faciant. (A.D. 813.) Capitularia patris nostri quæ Franci pro lege tenenda judicaverunt. (A.D. 837.) I have borrowed these quotations from Mably, who remarks that the word *populus* is never used in the earlier laws. See, too, Du Cange, vv. Lex, Mallum, Pactum.

first germ of representative legislation. Every count is directed to bring with him to the general assembly twelve Scabini, if there should be so many in his county; or, if not, should fill up the number out of the most respectable persons resident.[i] These Scabini were judicial assessors of the count, chosen by the allodial proprietors, in the county court, or mallus, though generally on his nomination.[j]

The circumstances, however, of the French empire for several subsequent ages were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne; and the people, or lesser freeholders, if they escaped absolute villenage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law. Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign. Historians who relate the election of an emperor or king of France seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy; and even in solemn instruments that record such transactions we find a sort of importance attached to the popular suffrage.[k] It is surely less

i Vult dominus Imperator ut in tale placitum quale ille nunc jusserit, veniat unusquisque comes, et adducat secum duodecim scabinos si tanti fuerint; sin autem, de melioribus hominibus illius comitatus suppleat numerum duodenarium. Mably, l. ii. c. ii.

j This seems to be sufficiently proved by Savigny (vol. i. p. 192, *217 et post*). His opinion is adopted by Meyer, Guizot, Grimm, and Troja. The last of these has found Scabini mentioned in Lombardy as early as 724; though Savigny had rejected all documents in which they are named anterior to Charlemagne.

The Scabini are not to be confounded, as sometimes has been the case, with the Rachimburgii, who were not chosen by the allodial proprietors, but were themselves such, or sometimes, perhaps, beneficiaries, summoned by the court as jurors were in England. They answered to the *prud' hommes*, *boni homines*, of later times; they formed the county or the hundred court, for the determination of civil and criminal causes. [Note XVI.]

k It has been intimated in another place, p. 156, that the French monarchy seems not to have been strictly hereditary under the later kings of the Merovingian race: at least expressions indicating a formal election are frequently employed by historians. Pepin of course came in by the choice of the nation. At his death he requested the consent of the counts and prelates to the succession of his sons (Baluzii Capitularia, p. 187); though they had bound themselves by oath at his consecration never to elect a king out of another family. Ut nunquam de alterius lumbis regem eligere præsumant. (Formula Consecrationis Pippini in Recueil des Historiens, t. v.) In the instrument of partition by Charlemagne among his descendants he provides for their immediate succession in absolute terms, without any mention of consent. But in the event of the decease of one of his sons leaving a child, whom the people shall choose, the other princes were to permit him to reign. Baluze, p. 440. This is repeated more perspicuously in the partition made by Louis I. in 817. Si quis eorum decedens legitimos filios reliquerit, non inter eos potestas ipsa dividatur, sed potius populus pariter conveniens, unum ex iis, quem dominus voluerit, eligat, et hunc senior frater in loco fratris et filii recipiat. Baluze, p. 577. Proofs of popular consent given to the succession of kings during the two next centuries are frequent, but of less importance on account of the irregular condition of government. Even after Hugh Capet's accession, hereditary right was far from being established. The first six kings of this dynasty procured the *coöptation* of their sons by having them crowned during their own lives. And this was not done without the consent of the

probable that a recognition of this elective right should have been introduced as a mere ceremony, than that the form should have survived after length of time and revolutions of government had almost obliterated the recollection of its meaning.

It must, however, be impossible to ascertain even the theoretical privileges of the subjects of Charlemagne, much more to decide how far they were substantial or illusory. We can only assert in general that there continued to be some mixture of democracy in the French constitution during the reigns of Charlemagne and his first successors. The primeval German institutions were not eradicated. In the capitularies the consent of the people is frequently expressed. Fifty years after Charlemagne, his grandson Charles the Bald succinctly expresses the theory of legislative power. A law, he says, is made by the people's consent and the king's enactment.[l] It would hardly be warranted by analogy or precedent to interpret the word people so very narrowly as to exclude any allodial proprietors, among whom, however unequal in opulence, no legal inequality of rank is supposed to have yet arisen.

But by whatever authority laws were enacted, whoever were the constituent members of national assemblies, they ceased to be held in about seventy years from the death of Charlemagne. The latest capitularies are of Carloman in 882.[m] From

chief vassals. (Recueil des Hist. t. xi. p. 133.) In the reign of Robert it was a great question whether the elder son should be thus designated as heir in preference to his younger brother, whom the queen, Constance, was anxious to place upon the throne. Odolric, Bishop of Orleans, writes to Fulbert, Bishop of Chartres, in terms which lead one to think that neither hereditary succession nor primogeniture was settled on any fixed principle. (Id. t. x. p. 504.) And a writer in the same collection, about the year 1000, expresses himself in the following manner: Melius est electioni principis non subscribere, quàm post subscriptionem electum contemnere; in altero enim libertatis amor laudatur, in altero servilis contumacia probro datur. Tres namque generales electiones novimus; quarum una est regis vel imperatoris, altera pontificis, altera abbatis. Et primam quidem facit concordia totius regni; secundum vero unanimitas civium et cleri; tertiam sanius consilium cœnobiticæ congregationis. (Id. p. 626.) At the coronation of Philip I., in 1059, the nobility and people (milites et populi tam majores quàm minores) testified their consent by crying, Laudamus, volumus, fiat. T. xi. p. 33. I suppose, if search were made, that similar testimonies might be found still later; and perhaps hereditary succession cannot be considered as a fundamental law till the reign of Philip Augustus, the era of many changes in the French constitution.

Sismondi has gone a great deal farther down, and observes that, though John assumed the royal power immediately on the death of his father, in 1350, he did not take the name of king, nor any seal but that of Duke of Normandy, till his coronation. He says, however, "notre royaume" in his instruments (x. 375). Even Charles V. called himself, or was called by some, Duke of Normandy, until his coronation; but all the lawyers called him king (xi. 6). The lawyers had established their maxim that the king never dies; which, however, was unknown while any traces of elective monarchy remained.

l Lex consensu populi fit, constitutione regis. Recueil des Hist. t. vii. p. 656.

m It is generally said that the capitularies cease with Charles the Simple, who died in 921. But Baluze has published only two under the name of that prince; the first, a declaration of his queen's jointure; the second, an arbitration of disputes in the church of Tongres; neither, surely, deserving the appellation of a law.

this time there ensues a long blank in the history of French legislation. The kingdom was as a great fief, or rather as a bundle of fiefs, and the king little more than one of a number of feudal nobles, differing rather in dignity than in power from some of the rest. The royal council was composed only of barons, or tenants in chief, prelates, and household officers. These now probably deliberated in private, as we hear no more of the consenting multitude. Political functions were not in that age so clearly separated as we are taught to fancy they should be; this council advised the king in matters of government, confirmed and consented to his grants, and judged in all civil and criminal cases where any peers of their court were concerned.*n* The great vassals of the crown acted for themselves in their own territories, with the assistance of councils similar to that of the king. Such, indeed, was the symmetry of feudal customs, that the manorial court of every vavassor represented in miniature that of his sovereign.*o*

But, notwithstanding the want of any permanent legislation during so long a period, instances occur in which the kings of France appear to have acted with the concurrence of an assembly more numerous and more particularly summoned than the royal council. At such a congress held in 1146 the crusade of Louis VII. was undertaken.*p* We find also an ordinance of the same prince in some collections, reciting that he had convoked a general assembly at Soissons, where many prelates and barons then present had consented and requested that private wars might cease for the term of ten years.*q* The famous

n Regali potentiâ in nullo abuti volentes, says Hugh Capet, omnia negotia reipublicæ in consultatione et sententiâ fidelium nostrorum disponimus. Recueil des Hist. t. x. p. 392. The subscriptions of these royal councillors were necessary for the confirmation, or, at least, the authentication, of charters, as was also the case in England, Spain, and Italy. This practice continued in England till the reign of John.

The Curia regis seems to have differed only in name from the Concilium regium. It is also called Curia parium, from the equality of the barons who composed it, standing in the same feudal degree of relation to the sovereign. But we are not yet arrived at the subject of jurisdiction, which it is very difficult to keep distinct from what is immediately before us.

o Recueil des Hist. t. xi. p. 300, and préface, p. 179. Vaissette, Hist. de Languedoc, t. ii. p. 508.

p Velly, t. iii. p. 119. This, he observes, is the first instance in which the word parliament is used for a deliberative assembly.

q Ego Ludovicus Dei gratiâ Francorum rex, ad reprimendum fervorem malignantium, et compescendum violentas prædorum manus, postulationibus cleri et assensu baroniæ, toti regno pacem constituimus. Eâ causâ, anno Incarnati Verbi 1155, iv. idus Jun. Suessionense concilium celebre adunavimus, et effuerunt archiepiscopi Remensis, Senonensis et eorum suffraganei; item barones, comes Flandrensis, Trecensis, et Nivernensis et quamplures alii, et dux Burgundiæ. Ex quorum beneplacito ordinavimus a veniente Paschâ ad decem annos, ut omnes ecclesiæ regni et omnes agricolæ, etc., pacem habeant et securitatem. —In pacem istam juraverunt dux Burgundiæ, comes Flandriæ, —— et reliqui barones qui aderant.

This ordinance is published in Du Chesne, Script. Rerum Gallicarum, t. iv., and in Recueil des Histor. t. xiv. p. 387; but not in the general collection.

Saladine tithe was imposed upon lay as well as ecclesiastical revenues by a similar convention in 1188.[r] And when Innocent IV., during his contest with the Emperor Frederic, requested an asylum in France, St. Louis, though much inclined to favor him, ventured only to give a conditional permission, provided it were agreeable to his barons, whom, he said, a king of France was bound to consult in such circumstances. Accordingly he assembled the French barons, who unanimously refused their consent.[s]

It was the ancient custom of the kings of France as well as of England, and indeed of all those vassals who affected a kind of sovereignty, to hold general meetings of their barons, called Cours Plénières, or Parliaments, at the great festivals of the year. These assemblies were principally intended to make a display of magnificence, and to keep the feudal tenants in good humor; nor is it easy to discover that they passed in anything but pageantry.[t] Some respectable antiquaries have however been of opinion that affairs of state were occasionally discussed in them; and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence.[u]

Excepting a few instances, most of which have been mentioned, it does not appear that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England: nor was any consent required for the validity of their edicts, except that of the ordinary council, chiefly formed of their household officers and less powerful vassals. This is at first sight very remarkable. For there can be no doubt that the government of Henry I. or Henry II. was incomparably stronger than that of Louis VI. or Louis VII. But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy. The peers of France were infrequent in their attendance upon the king's council, because they denied its coercive authority. It was a fundamental principle that every feudal tenant was so far sovereign within the limits of his fief, that he could not be bound by any law without his consent. The king, says St. Louis in his Establishments, cannot make proclamation, that is, declare

[r] Velly, t. iii. p. 315.
[s] Ibid. t. iv. p. 306.
[t] Du Cange, Dissert. 5, sur Joinville.
[u] Mém. de l'Acad. des Inscript. t. xli. Recueil des Hist. t. xi. préface, p. 155.

any new law, in the territory of a baron, without his consent, nor can the baron do so in that of a vavassor.[v] Thus, if legislative power be essential to sovereignty, we cannot in strictness assert the king of France to have been sovereign beyond the extent of his domanial territory. Nothing can more strikingly illustrate the dissimilitude of the French and English constitutions of government than the sentence above cited from the code of St. Louis.

Upon occasions when the necessity of common deliberation, or of giving to new provisions more extensive scope than the limits of a single fief, was too glaring to be overlooked, congresses of neighboring lords met in order to agree upon resolutions which each of them undertook to execute within his own domains. The king was sometimes a contracting party, but without any coercive authority over the rest. Thus we have what is called an ordinance, but, in reality, an agreement between the king (Philip Augustus), the Countess of Troyes or Champagne, and the Lord of Dampierre,[w] relating to the Jews in their domains; which agreement or ordinance, it is said, should endure "until ourselves, and the Countess of Troyes, and Guy de Dampierre, who make this contract, shall dissolve it with the consent of such of our barons as we shall summon for that purpose."[x]

Ecclesiastical councils were another substitute for a regular legislature; and this defect in the political constitution rendered their encroachments less obnoxious, and almost unavoidable. That of Troyes in 878, composed perhaps in part of laymen, imposed a fine upon the invaders of church property.[y] And the council of Toulouse, in 1229, prohibited the erection of any new fortresses, or the entering into any leagues, except against the enemies of religion; and ordained that judges should administer justice gratuitously, and publish the decrees of the council four times in the year.[z]

[v] Ne li rois ne puet mettre ban en la terre au baron sans son assentment, ne li bers [baron] ne puet mettre ban en la terre au vavasor. Ordonnances des Rois, t. i. p. 126.

[w] In former editions I have called the lord of Dampierre Count of Flanders. But it has been suggested to me that the lord of Dampierre was never Count of Flanders; his second brother married the younger sister of the heiress of that fief, who, after his death, inherited it from the elder. The ordinance related to the domains of Dampierre, in the Nivernois. This, however, makes the instance stronger against the legislative authority of the crown than as I had stated it.

[x] Quosque nos, et comitissa, Trecensis, et Guido de Domnâ petrâ, qui hoc facimus, per nos, et illos de baronibus nostris, quos ad hoc vocare volumus, illud diffaciamus. Ordonnances des Rois, t. i. p. 29. This ordinance bears no date, but it was probably between 1218 and 1223, the year of Philip's death.

[y] Vaissette, Hist. de Languedoc, t. ii. p. 6.

[z] Velly, t. iv. p. 132.

The first unequivocal attempt, for it was nothing more, at general legislation, was under Louis VIII. in 1223, in an ordinance which, like several of that age, relates to the condition and usurious dealings of the Jews. It is declared in the preamble to have been enacted per assensum archiepiscoporum, episcoporum, comitum, baronum, et militum regni Franciæ, qui Judæos habent, et qui Judæos non habent. This recital is probably untrue, and intended to cloak the bold innovation contained in the last clause of the following provision: Sciendum, quod nos et barones nostri statuimis et ordinavimus de statu Judæorum quod nullus nostrûm alterius Judæos recipere potest vel retinere; *et hoc intelligendum est tam de his qui stabilimentum juraverint quam de illis qui non juraverint.*[a] This was renewed with some alteration in 1230, de communi consilio baronum nostrorum.[b]

But whatever obedience the vassals of the crown might pay to this ordinance, their original exemption from legislative control remained, as we have seen, unimpaired at the date of the Establishment of St. Louis, about 1269; and their ill-judged confidence in this feudal privilege still led them to absent themselves from the royal council. It seems impossible to doubt that the barons of France might have asserted the same right which those of England had obtained, that of being duly summoned by special writ, and thus have rendered their consent necessary to every measure of legislation. But the fortunes of France were different. The Establishments of St. Louis are declared to be made "par grand conseil de sages hommes et de bons clers," but no mention is made of any consent given by the barons; nor does it often, if ever, occur in subsequent ordinances of the French kings.

The nobility did not long continue safe in their immunity from the king's legislative power. In the ensuing reign of Philip the Bold, Beaumanoir lays it down, though in very moderate and doubtful terms, that "when the king makes any ordinance specially for his own domains, the barons do not cease to act in their territories according to the ancient usage; but when the ordinance is general, it ought to run through the whole kingdom, and we ought to believe that it is made with good advice, and for the common benefit."[c] In another

[a] Ordonnances des Rois, t. i. p. 47.
[b] Id. p. 53.
[c] Coûtumes de Beauvoisis, c. 48.

place he says, with more positiveness, that "the king is sovereign above all, and has of right the general custody of the realm, for which cause he may make what ordinances he pleases for the common good, and what he ordains ought to be observed; nor is there anyone so great but may be drawn into the king's court for default of right or for false judgment, or in matters that affect the sovereign." [d] These latter words give us a clue to the solution of the problem by what means an absolute monarchy was established in France. For though the barons would have been little influenced by the authority of a lawyer like Beaumanoir, they were much less able to resist the coercive logic of a judicial tribunal. It was in vain for them to deny the obligation of royal ordinances within their own domains, when they were compelled to acknowledge the jurisdiction of the parliament of Paris, which took a very different view of their privileges. This progress of the royal jurisdiction will fall under the next topic of inquiry, and is only now hinted at, as the probable means of confirming the absolute legislative power of the French crown.

The ultimate source, however, of this increased authority will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse. Though the châtelains and vavassors who had depended upon those fiefs before their reunion were, agreeably to the text of St. Louis's ordinance, fully sovereign, in respect of legislation, within their territories, yet they were little competent, and perhaps little disposed, to offer any opposition to the royal edicts; and the same relative superiority of force, which had given the first kings of the house of Capet a tolerably effective control over the vassals dependent on Paris and Orleans, while they hardly pretended to any over Normandy and Toulouse, was now extended to the greater part of the kingdom. St. Louis, in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign; and his Establishments bear testimony to a state of political society which, even at the moment

d C. 34. Beaumanoir uses in one place still stronger language about the royal authority. The king, he says, may annul the releases of debts made by any one who accompanies him in military service, so that he may enforce them again; "for what it pleases him to do ought to be held as law" (c. 35). This I owe to the new edition of the "Coûtumes de Beaumanoir," by M. Beugnot, 1842.

of their promulgation, was passing away. The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system such as had been established in France during the dark confusion of the tenth century. Philip the Fair, by help of his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects.*e*

There was, however, one essential privilege which he could not hope to overturn by force, the immunity from taxation enjoyed by his barons. This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description; the king having no more right to impose a tallage upon the demesne towns of his vassals than upon themselves. Thus his resources, in point of taxation, were limited to his own domains; including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities. We have seen already the expedients employed by this rapacious monarch—a shameless depreciation of the coin, and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent. Of these measures, the first was odious, the second slow and imperfect. Confiding in his sovereign authority—though recently, yet almost completely, established—and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution. This was the convocation of the States-General, a representative body, composed of the three orders of the nation.*f* They were first convened in 1302, in order to give more weight to the king's cause in his great quarrel with Boniface VIII.; but their earliest grant of a subsidy is in 1314. Thus the nobility surrendered

e The reign of Philip the Fair has been very well discussed by Mably, Sismondi, and Guizot. "He changed," says the last, "monarchy into despotism; but he was not one of those despots who employ their absolute power for the public good." "On ne rencontre dans tout le cours de son règne aucune idée générale, et qui s'y rapporte au bien de ses sujets; c'est un despote égoïste, dévoué à lui-même qui règne pour lui seul." (Leçon 45.) The royal authority gained so much ascendency in his reign, that, while we have only 50 ordonnances of St. Louis in forty-two years, we have 334 of Philip IV. in about thirty.

f It is almost unanimously agreed among French writers that Philip the Fair first introduced a representation of the towns into his national assembly of States-General. Nevertheless, the Chronicles of St. Denis, and other historians of rather a late date, assert that the deputies of towns were present at a parliament in 1241, to advise the king what should be done in consequence of the Count of Angoulême's refusal of homage. Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. ii. p. 20; Villaret, t. ix. p. 125. The latter pretends even that they may be traced a century farther back; on voit déjà les gens de bonnes villes assister

to the crown their last privilege of territorial independence; and, having first submitted to its appellant jurisdiction over their tribunals, next to its legislative supremacy, now suffered their own dependents to become, as it were, immediate, and a third estate to rise up almost coördinate with themselves, endowed with new franchises, and bearing a new relation to the monarchy.

It is impossible not to perceive the motives of Philip in embodying the deputies of towns as a separate estate in the national representation. He might, no question, have convoked a parliament of his barons, and obtained a pecuniary contribution, which they would have levied upon their burgesses and other tenants. But, besides the ulterior policy of diminishing the control of the barons over their dependents, he had good reason to expect more liberal aid from the immediate representatives of the people than through the con-

aux états de 1145. Ibid. But he quotes no authority for this; and his vague language does not justify us in supposing that any representation of the three estates, properly so understood, did, or indeed could, take place in 1145, while the power of the aristocracy was unbroken, and very few towns had been incorporated. If it be true that the deputies of some royal towns were summoned to the parliament of 1241, the conclusion must not be inferred that they possessed any consenting voice, nor perhaps that they formed, strictly speaking, an integrant portion of the assembly. There is reason to believe that deputies from the royal burghs of Scotland occasionally appeared at the bar of parliament long before they had any deliberative voice.—Pinkerton's Hist. of Scotland, vol. i. p. 371.

An ordinance of St. Louis, quoted in a very respectable book, Vaissette's History of Languedoc, t. iii. p. 480, but not published in the Recueil des Ordonnances, not only shows the existence, in one instance, of a provincial legislative assembly, but is the earliest proof perhaps of the tiers état appearing as a constituent part of it. This relates to the seneschaussée, or county, of Beaucaire in Languedoc, and bears date in 1254. It provides that, if the seneschal shall think fit to prohibit the export of merchandise, he shall summon some of the prelates, barons, knights, and inhabitants of the chief towns, by whose advice he shall issue such prohibition, and not recall it, when made, without like advice. But though it is interesting to see the progressive importance of the citizens of towns, yet this temporary and insulated ordinance is not of itself sufficient to establish a constitutional right. Neither do we find therein any evidence of representation; it rather appears that the persons assisting in this assembly were notables, selected by the seneschal.

I am not aware of any instance of regular provincial estates being summoned with such full powers, although it was very common in the fourteenth century to ask their consent to grants of money, when the court was unwilling to convoke the States-General. Yet there is a passage in a book of considerable credit, the Grand Customary, or Somme Rurale of Bouteiller, which seems to render general the particular case of the seneschaussée of Beaucaire. Bouteiller wrote about the end of the fourteenth century. The great courts summoned from time to time by the baillis and seneschals were called assises. Their usual function was to administer justice, especially by way of appeal, and perhaps to redress abuses of inferior officers. But he seems to give them a more extended authority. En assise, he says, appellés, lec sages et seigneurs du pais, peuvent estre mises sus nouvelles constitutions, et ordonnances sur le pais et destruites autre que seront grevables, *et en autre temps non*, et doivent etre publiées safin que nul ne les pueust ignorer, et lors ne les peut ne doit jamais nul redarguer.—Mém. de l'Acad. des Inscriptions, t. xxx. p. 606.

The taille was assessed by respectable persons chosen by the advice of the parish priests and others, which gave the people a sort of share in the *repartition*, to use a French term, of public burdens; a matter of no small importance where a tax is levied on visible property. Ordonnances des Rois, p. 291; Beaumanoir, p. 269. This, however, continued, I believe, to be the practice in later times; I know it is so in the present system of France, and is perfectly distinguishable from a popular consent to taxation.

cession of a dissatisfied aristocracy. "He must be blind, indeed," says Pasquier, "who does not see that the roturier was expressly summoned to this assembly, contrary to the ancient institutions of France, for no other reason than that, inasmuch as the burden was intended to fall principally upon him, he might engage himself so far by promise, that he could not afterwards murmur or become refractory." *g* Nor would I deny the influence of more generous principles; the example of neighboring countries, the respect due to the progressive civilization and opulence of the towns, and the application of that ancient maxim of the northern monarchies, that whoever was elevated to the perfect dignity of a freeman acquired a claim to participate in the imposition of public tributes.

It is very difficult to ascertain the constitutional rights of the States-General, claimed or admitted, during forty years after their first convocation. If, indeed, we could implicitly confide in an historian of the sixteenth century, who asserts that Louis Hutin bound himself and his successors not to levy any tax without the consent of the three estates, the problem would find its solution.*h* This ample charter does not appear in the French archives; and though by no means to be rejected on that account, when we consider the strong motives for its destruction, cannot fairly be adduced as an authentic fact. Nor can we altogether infer, perhaps, from the collection of ordinances, that the crown had ever intentionally divested itself of the right to impose tallages on its domanial tenants. All others, however, were certainly exempted from that prerogative; and there seems to have been a general sentiment that no tax whatever could be levied without free consent of the estates.*i* Louis Hutin, in a charter granted to the nobles and burgesses of Picardy, promises to abolish the unjust taxes (maltotes) imposed by his father; *j* and in another instrument, called the charter of Normandy, declares that he renounces for himself and his successors all undue tallages and exactions, except in case of evident utility.*k* This exception is doubtless of perilous ambiguity; yet, as the charter was literally wrested

g Recherches de la France, l. ii. c. 7.

h Boulainvilliers (Hist. de l'Anc. Gouvernement, t. ii. p. 128) refers for this to Nicholas Gilles, a chronicler of no great repute.

i Mably, Observat. sur l'Hist. de France, l. v. c. 1, is positive against the right of Philip the Fair and his successors to impose taxes. Montlosier (Monarchie Française, t. i. p. 202) is of the same opinion. In fact, there is reason to believe that the kings in general did not claim that prerogative absolutely, whatever pretexts they might set up for occasional stretches of power.

j Ordonnances des Rois, t. i. p. 566.

k Ibid, t. i. p. 679.

from the king by an insurrectionary league, it might be expected that the same spirit would rebel against his royal interpretation of state-necessity. His successor, Philip the Long, tried the experiment of a gabelle, or excise upon salt. But it produced so much discontent that he was compelled to assemble the States-General, and to publish an ordinance, declaring that the impost was not designed to be perpetual, and that, if a sufficient supply for the existing war could be found elsewhere, it should instantly determine.[l] Whether this was was done I do not discover; nor do I conceive that any of the sons of Philip the Fair, inheriting much of his rapacity and ambition, abstained from extorting money without consent. Philip of Valois renewed and augmented the duties on salt by his own prerogative, nor had the abuse of debasing the current coin been ever carried to such a height as during his reign and the first years of his successor. These exactions, aggravated by the smart of a hostile invasion, produced a very remarkable concussion in the government of France.

I have been obliged to advert, in another place, to the memorable resistance made by the States-General of 1355 and 1356 to the royal authority, on account of its inseparable connection with the civil history of France.[m] In the present chapter the assumption of political influence by those assemblies deserves particular notice. Not that they pretended to restore the ancient constitution of the northern nations, still flourishing in Spain and England, the participation of legislative power with the crown. Five hundred years of anarchy and ignorance had swept away all remembrance of those general diets in which the capitularies of the Carlovingian dynasty had been established by common consent. Charlemagne himself was hardly known to the French of the fourteenth century, except as the hero of some silly romance or ballad. The States-General remonstrated, indeed, against abuses, and especially the most flagrant of all, the adulteration of money; but the ordinance granting redress emanated altogether from the king, and without the least reference to their consent, which sometimes appears to be studiously omitted.[n] But the privilege

l Ordonnances des Rois, t. i. p. 589.

m Book I., p. 55.

n The proceedings of States-General held under Philip IV. and his sons have left no trace in the French statute-book. Two ordonnances alone, out of some hundred enacted by Philip of Valois, appear to have been founded upon their suggestions.

It is absolutely certain that the States-General of France had at no period, and in no instance, a coördinate

upon which the States under John solely relied for securing the redress of grievances was that of granting money, and of regulating its collection. The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides. That, accordingly, which met in 1355 nominated a committee chosen out of the three orders, which was to sit after their separation, and which the king bound himself to consult, not only as to the internal arrangements of his administration, but upon every proposition of peace or armistice with England. Deputies were despatched into each district to superintend the collection and receive the produce of the subsidy granted by the States.*o* These assumptions of power would not long, we may be certain, have left the sole authority of legislation in the king, and might, perhaps, be censured as usurpation, if the peculiar emergency in which France was then placed did not furnish their defence. But, if it be true that the kingdom was reduced to the utmost danger and exhaustion, as much by malversation of its government as by the armies of Edward III., who shall deny to its representatives the right of ultimate sovereignty, and of suspending at least the royal prerogatives, by the abuse of which they were falling into destruction?*p* I confess that it is exceedingly difficult, or perhaps impracticable, with such information as we possess, to decide upon the motives and conduct of the States-General in their several meetings before and after the battle of Poitiers. Arbitrary power prevailed; and its opponents became, of course, the theme of obloquy with modern historians. Froissart, however, does not seem to impute any fault to these famous assemblies of the States-General; and still less a more contemporary historian, the anonymous continuator of Nangis. Their notices, however, are very slight; and our chief knowledge of the parliamentary history of France, if I may employ the expression, must be collected from

legislative authority with the crown, or even a consenting voice. Mably, Boulainvilliers, and Montlosier are as decisive on this subject as the most courtly writers of that country. It follows as a just consequence that France never possessed a free constitution; nor had the monarchy any limitations in respect of enacting laws, save those which, until the reign of Philip the Fair, the feudal principles had imposed.

o Ordonnances des Rois, t. iii. p. 21 and préface, p. 42. This preface by M. Sécousse, the editor, gives a very clear view of the general and provincial assemblies held in the reign of John. Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. ii., or Villaret, t. ix., may be perused with advantage.

p The second continuator of Nangis in the Spicilegium dwells on the heavy taxes, diminution of money, and general oppressiveness of government in this age: t. iii. p. 108.

the royal ordinances made upon these occasions, or from unpublished accounts of their transactions. Some of these, which are quoted by the later historians, are, of course, inaccessible to a writer in this country. But a manuscript in the British Museum, containing the early proceedings of that assembly which met in October, 1356, immediately after the battle of Poitiers, by no means leads to an unfavorable estimate of its intentions.[q] The tone of their representations to the Duke of Normandy (Charles V., not then called Dauphin) is full of loyal respect; their complaints of bad administration, though bold and pointed, not outrageous; their offers of subsidy liberal. The necessity of restoring the coin is strongly represented as the grand condition upon which they consented to tax the people, who had been long defrauded by the base money of Philip the Fair and his successors.[r]

But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. Charles, inexperienced and surrounded by evil counsellors, thought the States-General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful. He dismissed, therefore, the assembly, and had recourse to the easy but ruinous expedient of debasing

[q] Cotton MSS. Titus, t. xii. fol. 58-74. This manuscript is noticed, as an important document, in the preface to the third volume of Ordonnances, p. 48, by M. Sécousse, who had found it mentioned in the Bibliothèque Historique of Le Long, No. 11,242. No French antiquary appears, at least before that time, to have seen it; but Boulainvilliers conjectured that it related to the assembly of States in February, 1356 (1357), and M. Sécousse supposed it rather to be the original journal of the preceding meeting in October, 1356, from which a copy, found among the manuscripts of Dupuy, and frequently referred to by Sécousse himself in his preface, had been taken. M. Sécousse was perfectly right in supposing the manuscript in question to relate to the proceedings of October, and not of February; but it is not an original instrument. It forms part of a small volume written on vellum, and containing several other treatises. It seems, however, as far as I can judge, to be another copy of the account which Dupuy possessed, and which Sécousse so often quotes, under the name of Procès-verbal.

It is singular that Sismondi says (x. 479), with Sécousse before his eyes, that the *procès-verbaux* of the States-General, in 1356, are not extant.

[r] Et estoit et est l'entente de ceulx qui a la ditte convocation estoient, que quelconque ottroy ou ayde qu'ils feissent, ils eussent bonne monnoye et estable selon l'advis des trois estats; et que les chartres et lettres faites pour les reformations du royaume par le roy Philippe le Bel, et toutes celles qui furent faites par le roy notre seigneur qui est a present, fussent confirmées, enterinées, tenues, et gardées de point en point; et toutes les aides quelconques qui faites soient fussent recues et distribuées par ceulx qui soient a ce commis par les trois estats, et autorisées par M. le Duc, et sur certaines autres conditions et modifications justes et raissonables prouffitables, et semble que ceste aide eust été moult grant et moult prouffitable, et trop plus que aides de fait de monnoye. Car elle se feroit de volonté du peuple et consentement commun selon Dieu et selon conscience: Et le prouffit que on prent et veult on prendre sur le fait de la monnoye duquel on veult faire le fait de la guerre, et ce soit a la destruction, et a esté au temps passé, du roy et du royaume et des subjets; Et si se destruit le billon tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu'il ne vienne a destruction si on continue longuement; Et si est tout certain que les gens d'armes ne vouldroient estre contens de leurs gaiges par foible monnoye, &c.

the coin. This led to seditions at Paris, by which his authority, and even his life, were endangered. In February, 1357, three months after the last meeting had been dissolved, he was obliged to convoke the States again, and to enact an ordinance conformable to the petitions tendered by the former assembly.[s] This contained many excellent provisions, both for the redress of abuses and the vigorous prosecution of the war against Edward; and it is difficult to conceive that men who advised measures so conducive to the public weal could have been the blind instruments of the King of Navarre. But this, as I have already observed, is a problem in history that we cannot hope to resolve. It appears, however, that, in a few weeks after the promulgation of this ordinance, the proceedings of the reformers fell into discredit, and their commission of thirty-six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government had been intrusted, became unpopular. The subsidy produced much less than they had led the people to expect: briefly, the usual consequence of democratical emotions in a monarchy took place. Disappointed by the failure of hopes unreasonably entertained and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States-General, attached themselves to the party of Charles, and enabled him to quell opposition by force.[t] Marcel, provost of the traders, a municipal magistrate of Paris, detected in the overt execution of a traitorous conspiracy with the King of Navarre, was put to death by a private hand. Whatever there had been of real patriotism in the States-General, artfully confounded, according to the practice of courts, with these schemes of disaffected men, shared in the common obloquy; whatever substantial reforms had been projected the government threw aside as seditious innovations. Charles, who had assumed the title of regent, found in the States-General assembled at Paris, in 1359, a very different disposition from that which their predecessors had displayed, and publicly restored all counsellors whom in the former troubles he had been compelled to discard. Thus the monarchy resettled itself on

s Ordonnances des Rois, t. iii. p. 121.

t Discordiâ motâ, illi tres status ab incepto proposito cessaverunt. Ex tunc enim regni negotia male ire, &c. Continuator Gul. de Nangis in Spicilegio, t. iii. p. 115.

its ancient basis, or, more properly, acquired additional stability.[u]

Both John, after the peace of Bretigni, and Charles V. imposed taxes without consent of the States-General.[v] The latter, indeed, hardly ever convoked that assembly. Upon his death the contention between the crown and representative body was renewed; and, in the first meeting held after the accession of Charles VI., the government was compelled to revoke all taxes illegally imposed since the reign of Philip IV. [A.D. 1380.] This is the most remedial ordinance, perhaps, in the history of French legislation. "We will, ordain, and grant," says the king, "that the aids, subsidies, and impositions, of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor, Philip the Fair, shall be repealed and abolished; and we will and decree that, by the course which the said impositions have had, we or our successors shall not have acquired any right, nor shall any prejudice be wrought to our people, nor to their privileges and liberties, which shall be reëstablished in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since; and we will and decree that, if anything has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom." [w] If circumstances had turned out favorably for the cause of liberty, this ordinance might have been the basis of a free constitution, in respect, at least, of immunity from arbitrary taxation. But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure.

It seems, indeed, impossible that a number of deputies, elected merely for the purpose of granting money, can possess that weight, or be invested in the eyes of their constituents with that awfulness of station, which is required to withstand the royal authority. The States-General had no right of redressing abuses, except by petition; no share in the exercise

u A very full account of these transactions is given by Sécousse, in his History of Charles the Bad, p. 107, and in his preface to the third volume of the Ordonnances des Rois. The reader must make allowance for the usual partialities of a French historian, where an opposition to the reigning prince is his subject. A contrary bias is manifested by Boulainvilliers and Mably, whom, however, it is well worth while to hear.

v Mably, l. v. c. 5, note 5.

w Ordonnances des Rois, t. vi. p. 564. The ordinance is long, containing frequent repetitions, and a great redundance of words, intended to give more force, or at least solemnity.

of sovereignty, which is inseparable from the legislative power. Hence, even in their proper department of imposing taxes, they were supposed incapable of binding their constituents without their special assent. Whether it were the timidity of the deputies, or false notions of freedom, which produced this doctrine, it was evidently repugnant to the stability and dignity of a representative assembly. Nor was it less ruinous in practice than mistaken in theory. For as the necessary subsidies, after being provisionally granted by the States, were often rejected by their electors, the king found a reasonable pretence for dispensing with the concurrence of his subjects when he levied contributions upon them.

The States-General were convoked but rarely under Charles VI. and VII., both of whom levied money without their concurrence. Yet there are remarkable testimonies under the latter of these princes that the sanction of national representatives was still esteemed strictly requisite to any ordinance imposing a general tax, however the emergency of circumstances might excuse a more arbitrary procedure. Thus Charles VII., in 1436, declares that he has set up again the aids which had been previously abolished by the consent of the three estates.[x] And in the important edict establishing the companies of ordonnance, which is recited to be done by the advice and counsel of the States-General assembled at Orleans, the forty-first section appears to bear a necessary construction that no tallage could lawfully be imposed without such consent.[y] It is maintained, indeed, by some writers, that the perpetual taille established about the same time was actually granted by these States of 1439, though it does not so appear upon the face of any ordinance.[z] And certainly this is consonant to the real and recognized constitution of that age.

But the crafty advisers of courts in the fifteenth century, enlightened by experience of past dangers, were averse to encountering these great political masses, from which there were, even in peaceful times, some disquieting interferences, some testimonies of public spirit, and recollections of liberty to apprehend. The kings of France, indeed, had a resource, which generally enabled them to avoid a convocation of the States-General, without violating the national franchises.

x Ordonnances des Rois, t. xiii. p. 211.

y Ib., p. 312. Boulainvilliers mentions other instances where the States granted money during this reign: t. iii. p. 70.

z Bréquigny, préface au treizième tome des Ordonnances. Boulainvilliers, t. iii. p. 108.

From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation, and heard less of remonstrance and demand.[a] Languedoc in particular had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called the Languedoil. But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates during the intervals of the States-General—intervals which by this means were protracted far beyond that duration to which the exigencies of the crown would otherwise have confined them.[b] This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy—the distraction and want of unity consequent upon the decline of Charlemagne's family, which separated the different provinces, in respect of their interests and domestic government, from each other.

But the formality of consent, whether by general or provincial states, now ceased to be reckoned indispensable. The lawyers had rarely seconded any efforts to restrain arbitrary power: in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of freedom was proscribed; or, if they admitted that absolute prerogative might require some checks, it was such only as themselves, not the national representatives, should impose. Charles VII. levied money by his own authority. Louis XI. carried this encroachment to the highest pitch of exaction. It was the boast of courtiers that he first released the kings of France from dependence (*hors de page*); or, in other words, that he effectually demolished those barriers which, however imperfect and ill-placed, had imposed some impediment to the establishment of despotism.[c]

The exactions of Louis, however, though borne with pa-

a Villaret, t. xi. p. 270.

b Ordonnances des Rois, t. iii. préface.

c The preface to the sixteenth volume of Ordonnances, before quoted, displays a lamentable picture of the internal situation of France in consequence of excessive taxation and other abuses. These evils, in a less aggravated degree, continued ever since to retard the improvement and diminish the intrinsic prosperity of a country so extraordinarily endowed with natural advantages. Philip de Comines was forcibly struck with the different situation of England and the Netherlands. And Sir John Fortescue has a remarkable passage on the poverty and servitude of the French commons, contrasted with English freemen.—Difference of Limited and Absolute Monarchy, p. 17.

tience, did not pass for legal with those upon whom they pressed. Men still remembered their ancient privileges, which they might see with mortification well preserved in England. "There is no monarch or lord upon earth [says Philip de Comines, himself bred in courts] who can raise a farthing upon his subjects, beyond his own domains, without their free concession, except through tyranny and violence. It may be objected that in some cases there may not be time to assemble them, and that war will bear no delay; but I reply (he proceeds) that such haste ought not to be made, and there will be time enough; and I tell you that princes are more powerful, and more dreaded by their enemies, when they undertake anything with the consent of their subjects." *d*

The States-General met but twice during the reign of Louis XI., and on neither occasion for the purpose of granting money. But an assembly in the first year of Charles VIII., the States of Tours in 1484, is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation.

A warm contention arose for the regency upon the accession of Charles VIII., between his aunt, Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the Duke of Orleans, afterwards Louis XII. The latter combined to demand a convocation of the States-General, which accordingly took place. The king's minority and the factions at court seemed no unfavorable omens for liberty. But a scheme was artfully contrived which had the most direct tendency to break the force of a popular assembly. The deputies were classed in six nations, who debated in separate chambers, and consulted each other only upon the result of their respective deliberations. It was easy for the court to foment the jealousies natural to such a partition. Two nations, the Norman and Burgundian, asserted that the right of providing for the regency devolved, in the king's minority, upon the States-General; a claim of great boldness, and certainly not much founded upon precedents. In virtue of this, they proposed to form a council, not only of the princes, but of certain deputies to be elected by the six nations who composed the States. But the other four, those of Paris, Aquitaine, Languedoc, and Languedoil (which last

d Mém. de Comines, l. iv. c. 19.

comprised the central provinces), rejected this plan, from which the two former ultimately desisted, and the choice of councillors was left to the princes.

A firmer and more unanimous spirit was displayed upon the subject of public reformation. The tyranny of Louis XI. had been so unbounded, that all ranks agreed in calling for redress, and the new governors were desirous, at least by punishing his favorites, to show their inclination towards a change of system. They were very far, however, from approving the propositions of the States-General. These went to points which no court can bear to feel touched, though there is seldom any other mode of redressing public abuses; the profuse expense of the royal household, the number of pensions and improvident grants, the excessive establishment of troops. The States explicitly demanded that the taille and all other arbitrary imposts should be abolished; and that from thenceforward, "according to the natural liberty of France," no tax should be levied in the kingdom without the consent of the States. It was with great difficulty, and through the skilful management of the court, that they consented to the collection of the taxes payable in the time of Charles VII., with the addition of one-fourth as a gift to the king upon his accession. This subsidy they declare to be granted "by way of gift and concession, and not otherwise, and so as no one should from thenceforward call it a tax, but a gift and concession." And this was only to be in force for two years, after which they stipulated that another meeting should be convoked. But it was little likely that the government would encounter such a risk; and the princes, whose factious views the States had by no means seconded, felt no temptation to urge again their convocation. No assembly in the annals of France seems, notwithstanding some party selfishness arising out of the division into nations, to have conducted itself with so much public spirit and moderation; nor had that country perhaps ever so fair a prospect of establishing a legitimate constitution.*e*

5. The right of jurisdiction has undergone changes in France and in the adjacent countries still more remarkable than those

e I am altogether indebted to Garnier for the proceedings of the States of Tours. His account (Hist. de France, t. xviii. p. 154-348) is extremely copious, and derived from a manuscript journal. Comines alludes to them sometimes, but with little particularity. The above-mentioned manuscript was published in 1835, among the Documens Inédits sur l'Histoire de France.

of the legislative power; and passed through three very distinct stages as the popular, aristocratic, or regal influence predominated in the political system. The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority, and averse to surrendering what concerned every man's private right out of the hands of his neighbors and his equals. Every ten families are supposed to have had a magistrate of their own election: the tithingman of England, the decanus of France and Lombardy.*f* Next in order was the centenarius or Hundredary, whose name expresses the extent of his jurisdiction, and who, like the decanus, was chosen by those subject to it.*g* But the authority of these petty magistrates was gradually confined to the less important subjects of legal inquiry. No man, by a capitulary of Charlemagne, could be impleaded for his life, or liberty, or lands, or servants, in the hundred court.*h* In such weighty matters, or by way of appeal from the lower jurisdictions, the count of the district was judge. He indeed was appointed by the sovereign; but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence, of the people.*i* An ultimate appeal seems to have lain to the Count Palatine, an officer of the royal household; and sometimes causes were decided by the sovereign himself.*j* Such was the original model of judicature; but as complaints of injustice and neglect were frequently made against the counts, Charlemagne,

f The Decanus is mentioned by a writer of the ninth age as the lowest species of judge, immediately under the Centenarius. The latter is compared to the Plebanus, or priest, of a church where baptism was performed, and the former to an inferior presbyter. Du Cange, v. Decanus; and Muratori, Antiq. Ital. Dissert. 10.

g It is evident from the Capitularies of Charlemagne (Baluze, t. i. p. 426, 466) that the Centenarii were elected by the people; that is, I suppose, the freeholders.

h Ut nullus homo in placito centenarii neque ad mortem, neque ad libertatem suam amittendam, aut ad res reddendas vel mancipia judicetur. Sed ista aut in presentiâ comitis vel missorum nostrorum judicentur. Capit. A.D. 812; Baluz. p. 497.

i Baluzii Capitularia, p. 466; Muratori, Dissert. 10; Du Cange, v. Scabini. These Scabini may be traced by the light of charters down to the eleventh century. Recueil des Historiens, t. vi. préface, p. 186. There is, in particular, a decisive proof of their existence in 918, in a record which I have already had occasion to quote. Vaissette, Hist. de Languedoc, t. ii. Appendix, p. 56. Du Cange, Baluze, and other antiquaries have confounded the Scabini with the Rachimburgii, of whom we read in the oldest laws. But Savigny and Guizot have proved the latter were landowners, acting in the county courts as judges under the presidency of the count, but wholly independent of him. The Scabini in Charlemagne's age superseded them.—Essais sur l'Histoire de France, pp. 259, 272.

j Du Cange, Dissertation 14, sur Joinville; and Glossary, v. Comites Palatini; Mém. de l'Acad. des Inscript. t. xxx. p. 590. Louis the Debonair gave one day in every week for hearing causes; but his subjects were required not to have recourse to him, unless where the Missi or the counts had not done justice. Baluze, t. i. p. 668. Charles the Bald expressly reserves an appeal to himself from the inferior tribunals. Capit. 869, t. ii. p. 215. In his reign there was at least a claim to sovereignty preserved.

desirous on every account to control them, appointed special judges, called Missi Regii, who held assises from place to place, inquired into abuses and maladministration of justice, enforced its execution, and expelled inferior judges from their offices for misconduct.[k]

This judicial system was gradually superseded by one founded upon totally opposite principles, those of feudal privilege. It is difficult to ascertain the progress of territorial jurisdiction. In many early charters of the French kings, beginning with one of Dagobert I. in 630, we find inserted in their grants of land an immunity from the entrance of the ordinary judges, either to hear causes, or to exact certain dues accruing to the king and to themselves.[l] These charters indeed relate to church lands, which, as it seems implied by a law of Charlemagne, universally possessed an exemption from ordinary jurisdiction. A precedent, however, in Marculfus leads us to infer a similar immunity to have been usual in gifts to private persons.[m] These rights of justice in the beneficiary tenants of the crown are attested in several passages of the capitularies. And a charter of Louis I. to a private individual contains a full and exclusive concession of jurisdiction over all persons resident within the territory, though subject to the appellant control of the royal tribunals.[n] It is obvious, indeed, that an exemption from the regular judicial authorities implied or naturally led to a right of administering justice in their place.

k For the jurisdiction of the Missi Regii, besides the Capitularies themselves, see Muratori's eighth Dissertation. They went their circuits four times a year. Capitul. A.D. 812; A.D. 823. A vestige of this institution long continued in the province of Auvergne, under the name of Grands Jours d'Auvergne; which Louis XI. revived in 1479. Garnier, Hist. de France, t. xviii. p. 458.

l If a charter of Clovis to a monastery called Reomaense, dated 496, is genuine, the same words of exemption occurring in it, we must refer territorial jurisdiction to the very infancy of the French monarchy. And M. Lehuerou (Inst. Caroling. p. 225 *et post*) has strongly contended for the right of lords to exercise jurisdiction in virtue of their ownership of the soil, and without regard to the personal law of those coming within its scope by residence. This territorial right he deduces from the earliest times; it was an enlargement of the ancient *mundium*, or protection, among the Germans; which must have been solely personal before the establishment of separate property in land, but became local after the settlement in Gaul, to which that great civil revolution was due. The authority of M. Lehuerou is entitled to much respect; yet his theory seems to involve a more extensive development of the feudal system in the Merovingian period than we generally admit.

m Marculfi Formulæ, l. i. c. 17.

n Et nullus comes, nec vicarius, nec juniores eorum, nec illus judex publicus illorum, homines qui super illorum aprisione habitant, aut in illorum proprio, distringere nec judicare præsumant; sed Johannes et filii sui, et posteritas illorum, illi eos judicent et distringant. Et quicquid per legem judicaverint, stabilis permaneat. Et si extra legem fecerint, per legem emendent. Baluzii Capitularia, t. ii. p. 1405.

This appellant control was preserved by the capitulary of Charles the Bald, quoted already, over the territorial as well as royal tribunals. Si aliquis episcopus, vel comes ac vassus noster suc homini contra rectum et justitiam fecerit, et si inde ad nos reclamaverit, sciat quia, sicut ratio et lex est, hoc emendare faciemus.

But this could at first hardly extend beyond the tributaries or villeins who cultivated their master's soil, or, at most, to free persons without property, resident in the territory. To determine their quarrels, or chastise their offences, was no very illustrious privilege. An allodial freeholder could own no jurisdiction but that of the king. It was the general prevalence of subinfeudation which gave importance to the territorial jurisdictions of the nobility. For now the military tenants, instead of repairing to the county-court, sought justice in that of their immediate lord; or rather the count himself, become the suzerain instead of the governor of his district, altered the form of his tribunal upon the feudal model.*o* A system of procedure so congenial to the spirit of the age spread universally over France and Germany. The tribunals of the king were forgotten like his laws; the one retaining as little authority to correct, as the other to regulate, the decisions of a territorial judge. The rules of evidence were superseded by that monstrous birth of ferocity and superstition, the judicial combat, and the maxims of law reduced to a few capricious customs, which varied in almost every barony.

These rights of administering justice were possessed by the owners of fiefs in very different degrees; and, in France, were divided into the high, the middle, and the low jurisdiction.*p* The first species alone (la haute justice) conveyed the power of life and death; it was inherent in the baron and the châtelain, and sometimes enjoyed by the simple vavassor. The lower jurisdictions were not competent to judge in capital cases, and consequently forced to send such criminals to the court of the superior. But in some places, a thief taken in the fact might be punished with death by a lord who had only the low jurisdiction. In England this privilege was known by the uncouth terms of Infangthef and Outfangthef. The high jurisdiction, however, was not very common in England, except in the chartered towns.*q*

o We may perhaps infer, from a capitulary of Charlemagne in 809, that the feudal tenants were already employed as assessors in the administration of justice, concurrently with the Scabini mentioned above. Ut nullus ad placitum venire rogatur, nisi qui causum habet ad quærendum, exceptis scabinis et vassallis comitum. Baluzii Capitularia, t. i. p. 465.

p Velly, t. vi. p. 131; Denisart, Houard, and other law-books.

q A strangely cruel privilege was possessed in Aragon by the lords who had not the higher jurisdiction, and consequently could not publicly execute a criminal: that of starving him to death in prison. This was established by law in 1247. Si vassallus domini non habentis merum nec mixtum imperium, in loco occideret vassallum, dominus loci potest eum occidere fame, frigore et siti. Et quilibet dominus loci habet hanc jurisdictionum necandi fame, frigore et

Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent. While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount, to administer justice. Ecclesiastical lords, who were prohibited by the canons from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate, or vidame, whose tenure was often feudal and hereditary. The viguiers (vicarii), bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station, as the advocates of monasteries. It seems to have been an established maxim, at least in later times, that the lord could not sit personally in judgment, but must intrust that function to his bailiff and vassals.[r] According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings. "There are some places," says Beaumanoir, "where the bailiff decides in judgment, and others where the vassals of the lord decide. But even where the bailiff is the judge, he ought to advise with the most prudent, and determine by their advice; since thus he shall be most secure if an appeal is made from his judgment."[s] And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might entitle him, was qualified to exercise them, unless he had at least two vassals to sit as peers in his court.[t]

These courts of a feudal barony or manor required neither the knowledge of positive law nor the dictates of natural sagacity. In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the combat was award-

siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat. Du Cange, voc. Fame necare.

It is remarkable that the Neapolitan barons had no criminal jurisdiction, at least of the higher kind, till the reign of Alfonso, in 1443, who sold this destructive privilege, at a time when it was almost abolished in other kingdoms. Giannone, l. xxii. c. 5, and l. xxvi. c. 6.

r Boutillier, in his Somme Rurale, written near the end of the fourteenth century, asserts this positively. Il convient quilz facent jugier par aultre que par eulx, cest a savoir par leurs hommes feudaulx a leur semonce et *conjuré* [?] ou de leur bailiff ou lieutenant, et ont ressort a leur souverain. Fol. 3.

s Coûtumes de Beauvoisis, p. 11.

t It was lawful, in such case, to borrow the vassals of the superior lord. Thaumassière sur Beaumanoir, p. 375. See Du Cange, v. Pares, an excellent article; and Placitum.

In England a manor is extinguished, at least as to jurisdiction, when there are not two freeholders subject to escheat left as suitors to the court-baron. Their tenancy must therefore have been created before the statute of Quia Emptores, 18 Edw. I. (1290), since which no new estate in fee-simple can be held of the lord, nor consequently be liable to escheat to him.

ed; and God, as they deemed, was the judge.[u] The nobleman fought on horseback, with all his arms of attack and defence; the plebeian on foot, with his club and target. The same were the weapons of the champions to whom women and ecclesiastics were permitted to intrust their rights.[v] If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim and paid a fine. If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary, perhaps, to obviate the corruption of these hired defenders. In criminal cases the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offence of which he accused his adversary.[w] Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgment might indeed be made to the suzerain, but it could only be tried by battle.[x] And in this, the appellant, if he would impeach the concurrent judgment of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law. If fortune or miracle should make him conqueror in every contest, the judges were equally subject to death, and their court forfeited their jurisdiction forever. A less perilous mode of appeal was to call the first judge who pronounced a hostile sentence into the field. If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached.[y] But for denial of justice, that is, for a refusal to try his suit, the plaintiff repaired to the court of the next supe-

u Trial by combat does not seem to have established itself completely in France till ordeals went into disuse, which Charlemagne rather encouraged, and which, in his age, the clergy for the most part approved. The former species of decision, may, however, be met with under the first Merovingian kings (Greg. Turon. l. vii. c. 19, l. x. c. 10), and seems to have prevailed in Burgundy. It is established by the laws of the Alemanni or Suabians. Baluz. t. i. p. 80. It was always popular in Lombardy, Liutprand, King of the Lombards, says in one of his laws, Incerti sumus de judicio Dei, et quosdam audivimus per pugnam sine justâ causâ suam causam perdere. Sed propter consuetudinem gentis nostræ Langobardorum legem impiam vetare non possumus. Muratori, Script. Rerum Italicarum, t. ii. p. 65. Otho II. established it in all disputes concerning real property; and there is a famous case where the right of representation, or preference of the son of a deceased elder child to his uncle in succession to his grandfather's estate, was settled by this test.

v For the ceremonies of trial by combat, see Houard, Anciennes Loix Françoises, t. i. p. 264; Velly, t. vi. p. 106; Recueil des Historiens, t. xi. préface, p. 189; Du Cange, v. Duellum. The great original authorities are the Assises de Jérusalem, c. 104, and Beaumanoir, c. 31.

w Beaumanoir, p. 315.

x Id. c. 61. In England the appeal for false judgment to the king's court was not tried by battle. Glanvil, l. xii. c. 7.

y Id. c. 61.

rior lord, and supported his appeal by testimony.*z* Yet, even here the witnesses might be defied, and the pure stream of justice turned at once into the torrent of barbarous contest.*a*

Such was the judicial system of France when St. Louis enacted that great code which bears the name of his Establishments. The rules of civil and criminal procedure, as well as the principles of legal decisions, are there laid down with much detail. But that incomparable prince, unable to overthrow the judicial combat, confined himself to discourage it by the example of a wiser jurisprudence. It was abolished throughout the royal domains. The bailiffs and seneschals who rendered justice to the king's immediate subjects were bound to follow his own laws. He not only received appeals from their sentences in his own court of peers, but listened to all complaints with a kind of patriarchal simplicity. "Many times," says Joinville, "I have seen the good saint, after hearing mass, in the summer season, lay himself at the foot of an oak in the wood of Vincennes, and make us all sit round him; when those who would, came and spake to him without let of any officer, and he would ask aloud if there were any present who had suits; and when they appeared, would bid two of his bailiffs determine their cause upon the spot."*b*

z Beaumanoir, p. 315. The practice was to challenge the second witness, since the testimony of one was insufficient. But this must be done before he completes his oath, says Beaumanoir, for after he has been sworn he must be heard and believed: p. 316. No one was bound, as we may well believe, to be a witness for another, in cases where such an appeal might be made from his testimony.

a Mably is certainly mistaken in his opinion that appeals for denial of justice were not older than the reign of Philip Augustus. (Observations sur l'Hist. de F. l. iii. c. 3.) Before this time the vassal's remedy, he thinks, was to make war upon his lord. And this may probably have been frequently practised. Indeed it is permitted, as we have seen by the code of St. Louis. But those who were not strong enough to adopt this dangerous means of redress would surely avail themselves of the assistance of the suzerain, which in general would be readily afforded. We find several instances of the king's interference for the redress of injuries in Suger's Life of Louis VI. That active and spirited prince, with the assistance of his enlightened biographer, recovered a great part of the royal authority, which had been reduced to the lowest ebb in the long and slothful reign of his father, Philip I. One passage especially contains a clear evidence of the appeal for denial of justice, and consequently refutes Mably's opinion. In 1105 the inhabitants of St. Sévère, in Berri, complain of their lord Humbald, and request the king aut ad exequendam justitiam cogere, aut jure pro injuria castrum lege Salicâ amittere. I quote from the preface to the fourteenth volume of the Recueil des Historiens, p. 44. It may be noticed, by the way, that lex Salica is here used for the feudal customs; in which sense I believe it not unfrequently occurs. Many proofs might be brought of the interposition of both Louis VI. and VII. in the disputes between their barons and arrière vassals. Thus the war between the latter and Henry II. of England in 1166 was occasioned by his entertaining a complaint from the Count of Auvergne, without waiting for the decision of Henry, as Duke of Guienne.—Velly, t. ii. p. 190; Lyttelton's Henry II. vol. ii. p. 448; Recueil des Historiens, ubi supra, p. 49.

b Collection des Mémoires, t. i. p. 25. Montesquieu supposes that the Establishments of St. Louis are not the original constitutions of that prince, but a work founded on them—a compilation of the old customs blended with his new provisions. Esprit des Loix, xxviii. 37, 38. I do not know that any later inquirers have adopted this hypothesis.

The influence of this new jurisprudence established by St. Louis, combined with the great enhancements of the royal prerogatives in every other respect, produced a rapid change in the legal administration of France. Though trial by combat occupies a considerable space in the work of Beaumanoir, written under Philip the Bold, it was already much limited. Appeals for false judgment might sometimes be tried, as he expresses it, par erremens de plait; that is, I presume, where the alleged error of the court below was in matter of law. For wager of battle was chiefly intended to ascertain controverted facts.[c] So where the suzerain saw clearly that the judgment of the inferior court was right, he ought not to permit the combat. Or if the plaintiff, even in the first instance, could produce a record or a written obligation, or if the fact before the court was notorious, there was no room for battle.[d] "It would be a hard thing," says Beaumanoir, "that if one had killed my near relation in open day before many credible persons, I should be compelled to fight in order to prove his death." This reflection is the dictate of common sense, and shows that the prejudice in favor of judicial combat was dying away. In the Assises de Jérusalem, a monument of customs two hundred years earlier than the age of Beaumanoir, we find little mention of any other mode of decision. The compiler of that book thinks it would be very injurious if no wager of battle were to be allowed against witnesses in causes affecting succession; since otherwise every right heir might be disinherited, as it would be easy to find two persons who would perjure themselves for money, if they had no fear of being challenged for their testimony.[e] This passage indicates the real cause of preserving the judicial combat, systematic perjury in witnesses, and want of legal discrimination in judges.

It was, in all civil suits, at the discretion of the litigant parties to adopt the law of the Establishments, instead of resorting to combat.[f] As gentler manners prevailed, especially among those who did not make arms their profession, the wisdom and equity of the new code were naturally preferred. The superstition which had originally led to the latter lost its weight through experience and the uniform opposition of the clergy. The same superiority of just and settled rules over fortune and

c Beaumanoir, p. 22.
d Id. p. 314.
e C. 167.
f Beaumanoir, p. 309.

violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king. Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains.[g] Every barony, as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or seneschaussée; the former name prevailing most in the northern, the latter in the southern, provinces. The vassals whose lands depended upon, or, in feudal language, moved, from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it.* This began rapidly to encroach upon the feudal rights of justice. In a variety of cases, termed royal, the territorial court was pronounced incompetent; they were reserved for the judges of the crown; and, in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature.[h] The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them. Louis X., when requested by the barons of Champagne to explain what was meant by royal causes, gave this mysterious definition: Everything which by right or custom ought exclusively to come under the cognizance of a sovereign prince.[i] Vassals were permitted to complain in the first instance to the king's court of injuries committed by their lords. These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances. Philip the Fair bequeathed to his successor the task of appeasing the storm which his own administration had excited. Leagues were formed in most of the northern provinces for the redress of grievances, in which the third estate, oppressed by taxation, united with the vassals, whose feudal privileges had been infringed. Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown persisted in

g Ordonnances des Rois, t. i. p. 18.

* Du Cange, v. Balivi. Mém. de l'Acad. des Inscriptions, t. xxx: p. 603. Mably, l. iv. c. 4. Boulainvilliers, t. ii. p. 22.

h Mably, Boulainvilliers, Montlosier, t. i. p. 104.

i Ordonnances des Rois, p. 606.

restraining territorial jurisdiction.*j* Appeals became more common for false judgment, as well as denial of right; and in neither was the combat permitted. It was still, however, preserved in accusations of heinous crimes, unsupported by any testimony but that of the prosecutor, and was never abolished by any positive law, either in France or England. But instances of its occurrence are not frequent even in the fourteenth century; and one of these, rather remarkable in its circumstances, must have had a tendency to explode the remaining superstition which had preserved this mode of decision.*k*

The supreme council, or court of peers, to whose deliberate functions I have already adverted, was also the great judicial tribunal of the French crown from the accession of Hugh Capet.*l* By this alone the barons of France, or tenants in chief of the king, could be judged. To this court appeals for denials of justice were referred. It was originally composed, as has been observed, of the feudal vassals, coequals of those who were to be tried by it; and also of the household officers, whose right of concurrence, however anomalous, was extremely ancient. But after the business of the court came to increase through the multiplicity of appeals, especially from the bailiffs established by Philip Augustus in the royal domains, the barons found neither leisure nor capacity for the ordinary administration of justice, and reserved their attendance for occasions where some of their own orders were implicated in a criminal process. St. Louis, anxious for regularity and enlightened decisions, made a considerable alteration by introducing some councillors of inferior rank, chiefly ecclesiastics, as advisers of the court, though, as is supposed, without any decisive suffrage. The court now became known by the name of parliament. Registers of its proceedings were kept, of which the earliest

j Hoc perpetuo prohibemus edicto, ne subditi, seu justiciabiles prælatorum aut baronum nostrorum, aut aliorum subjectorum nostrorum, trahantur in causum coram nostris officialibus, nec eorum causæ, nisi in casu ressorti, in nostris curiis audiantur, vel in alio casu ad nos pertinenti. Ordonnances des Rois, t. i. p. 362. This ordinance is of Philip the Fair, in 1302; but those passed under Louis Hutin are to the same effect. They may be read at length in the Ordonnances des Rois; or abridged by Boulainvilliers, t. ii. p. 94.

k Philip IV. restricted trial by combat to cases where four conditions were united. The crime must be capital; its commission certain; the accused greatly suspected; and no proof to be obtained by witnesses. Under these limitations, or at least some of them, for it appears that they were not all regarded, instances occur for some centuries.

See the singular story of Carouges and Le Gris, to which I allude in the text. Villaret, t. xi. p. 412. Trial by combat was allowed in Scotland exactly under the same conditions as in France. Pinkerton's Hist. of Scotland, vol. i. p. 66.

l [Note XVII.]

extant are of the year 1254. It was still, perhaps, in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The councillors nominated by the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage.[m]

An ordinance of Philip the Fair, in 1302, is generally supposed to have fixed the seat of parliament at Paris, as well as altered its constituent parts.[n] Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the whole feudal court was nearly obliterated in that of the Parliament of Paris. A systematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months' duration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterwards in this constitution. The nobility, who originally sat there, grew weary of an attendance which detained them from war, and from their favorite pursuits at home. The bishops were dismissed to their necessary residence upon their sees.[o] As they withdrew, a class of regular lawyers, originally employed, as it appears, in the preparatory business, without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence.

They introduced at the same time a new theory of absolute power, and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favor of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons. In the civil and canon laws a system of political maxims was found very uncongenial to the feudal customs. The French lawyers of the fourteenth and

m Boulainvilliers, t. ii. p. 29, 44; Mably, l. iv. c. 2; Encyclopédie, art. Parlement; Mém. de l'Acad. des Inscript. t. xxx. p. 603. The great difficulty I have found in this investigation will plead my excuse if errors are detected.

n Pasquier (Recherches de la France, l. ii. c. 3) published this ordinance, which, indeed, as the editor of Ordonnances des Rois, t. i. p. 547, observes, is no ordinance, but a regulation for the execution of one previously made; nor does it establish the residence of the parliament in Paris.

o Velly, Hist. de France, t. vii. p. 303, and Encyclopédie, art. Parlement, are the best authorities I have found. There may very possibly be superior works on this branch of the French constitution which have not fallen into my hands.

fifteenth centuries frequently give their king the title of emperor, and treat disobedience to him as sacrilege.[p]

But among these lawyers, although the general tenants of the crown by barony ceased to appear, there still continued to sit a more eminent body, the lay and spiritual peers of France, representatives, as it were, of that ancient baronial aristocracy. It is a very controverted question at what time this exclusive dignity of peerage, a word obviously applicable by the feudal law to all persons coequal in degree of tenure, was reserved to twelve vassals. At the coronation of Philip Augustus, in 1179, we first perceive the six great feudatories, dukes of Burgundy, Normandy, Guienne, counts of Toulouse, Flanders, Champagne, distinguished by the offices they performed in that ceremony. It was natural, indeed, that, by their princely splendor and importance, they should eclipse such petty lords as Bourbon and Coucy, however equal in quality of tenure. During the reign of Philip Augustus, six ecclesiastical peers, the duke-bishops of Rheims, Laon, and Langres, the count-bishops of Beauvais, Châlons, and Noyon, were added as a sort of parallel or counterpoise.[q] Their precedence does not, however, appear to have carried with it any other privilege, at least in judicature, than other barons enjoyed. But their pre-eminence being fully confirmed, Philip the Fair set the precedent of augmenting their original number, by conferring the dignity of peerage on the Duke of Brittany and the Count of Artois.[r] Other creations took place subsequently; but these were confined, during the period comprised in this work, to princes of the royal blood. The peers were constant members of the parliament, from which other vassals holding in chief were never, perhaps, excluded by law, but their attendance was rare in the fourteenth century, and soon afterwards ceased altogether.[s]

A judicial body, composed of the greatest nobles in France, as well as of learned and eminent lawyers, must naturally have soon become politically important. Notwithstanding their disposition to enhance every royal prerogative, as opposed to feudal privileges, the parliament was not disinclined to see its own protection invoked by the subject. It appears by an ordinance of Charles V., in 1371, that the nobility of Languedoc

[p] Mably, l. iv. c. 2, note 10.
[q] Velly, t. ii. p. 287; t. iii. p. 221; t. iv. p. 41.
[r] Id. t. vii. p. 97.
[s] Encyclopédie, art. Parlement, p. 6.

had appealed to the parliament of Paris against a tax imposed by the king's authority; and this, at a time when the French constitution did not recognize the levying of money without consent of the States-General, must have been a just ground of appeal, though the present ordinance annuls and overturns it.[t] During the tempests of Charles VI.'s unhappy reign the parliament acquired a more decided authority, and held, in some degree, the balance between the contending factions of Orleans and Burgundy. This influence was partly owing to one remarkable function attributed to the parliament, which raised it much above the level of a merely political tribunal, and has at various times wrought striking effects in the French monarchy.

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly declared as well as agreed upon. But after the gradual revolution of government, which took away from the feudal aristocracy all control over the king's edicts, and substituted a new magistracy for the ancient baronial court, these legislative ordinances were commonly drawn up by the interior council, or what we may call the ministry. They were in some instances promulgated by the king in parliament. Others were sent thither for registration or entry upon their records. This formality was by degrees, if not from the beginning, deemed essential to render them authentic and notorious, and therefore indirectly gave them the sanction and validity of a law.[u] Such, at least, appears to have been the received doctrine before the end of the fourteenth century. It has been contended by Mably, among other writers, that at so early an epoch the parliament of Paris did not enjoy, nor even claim to itself, that anomalous right of judging the expediency of edicts proceeding from the king, which afterwards so remarkably modified the absoluteness of his power. In the fifteenth century, however, it certainly manifested pretensions of this nature: first, by registering ordinances in such a manner as to testify its own unwillingness and disapprobation, of which one instance occurs as early as 1418, and another in 1443; and, afterwards, by remonstrating against and delaying the registration of laws which it deemed inimical to the public interest. A conspicuous proof

[t] Mably, l. v. c. 5, note 5.

[u] Encyclopédie, art. Parlement.

of this spirit was given in their opposition to Louis XI. when repealing the Pragmatic Sanction of his father—an ordinance essential, in their opinion, to the liberties of the Gallican church. In this instance they ultimately yielded; but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain.*v*

The counsellors of parliament were originally appointed by the king; and they were even changed according to circumstances. Charles V. made the first alteration, by permitting them to fill up vacancies by election, which usage continued during the next reign. Charles VII. resumed the nomination of fresh members upon vacancies. Louis XI. even displaced actual counsellors. But in 1468, from whatever motive, he published a most important ordinance, declaring the presidents and counsellors of parliament immovable, except in case of legal forfeiture.*w* This extraordinary measure of conferring independence on a body which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest so usually found in crafty men. But, be this as it may, there was formed in the parliament of Paris an independent power not emanating from the royal will, nor liable, except through force, to be destroyed by it; which, in later times, became almost the sole depositary, if not of what we should call the love of freedom, yet of public spirit and attachment to justice. France, so fertile of great men in the sixteenth and seventeenth centuries, might better spare, perhaps, from her annals any class and description of them than her lawyers. Doubtless the parliament of Paris, with its prejudices and narrow views, its high notions of loyal obedience so strangely mixed up with remonstrances and resistance, its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king whenever the thought fit to exert the sinews of his prerogative, but was an inadequate substitute for that co-ordinate sovereignty, that equal concurrence of national representatives in legislation, which has long been the exclusive pride of our government,* and to which the States-General of France, in their best days, had never aspired. No

v Mably, l. vi. c. 5. notes 19 and 21; Garnier, Hist. de France, t. xvii. pp. 219, 380.

w Villaret, t. xiv. p. 231; Encyclopédie, art. Parlement.

* The English government.

man of sane understanding would desire to revive institutions both uncongenial to modern opinions and to the natural order of society. Yet the name of the parliament of Paris must ever be respectable. It exhibited upon various occasions virtues from which human esteem is as inseparable as the shadow from the substance—a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency. Whether indeed these qualities have been so generally characteristic of the French people as to afford no peculiar commendation to the parliament of Paris, it is rather for the observer of the present day than the historian of past times to decide.[x]

The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads—the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority. The principal augmentations of its domain have been historically mentioned in the last book, but the subject may here require further notice. The French kings naturally acted upon a system, in order to recover those possessions which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy. This course, pursued with tolerable

[x] The province of Languedoc, with its dependencies of Quercy and Rouergue, having belonged almost in full sovereignty to the counts of Toulouse, was not perhaps subject to the feudal resort or appellant jurisdiction of any tribunal at Paris. Philip the Bold, after its reunion to the crown, established the parliament of Toulouse, a tribunal without appeal, in 1280. This was, however, suspended from 1291 to 1443, during which interval the parliament of Paris exercised an appellant jurisdiction over Languedoc. Vaissette, Hist. de Lang. t. iv. p. 60, 71, 524. Sovereign courts or parliaments were established by Charles VII. at Grenoble for Dauphiné, and by Louis XI. at Bordeaux and Dijon for Guienne and Burgundy. The parliament of Rouen is not so ancient. These institutions rather diminished the resort of the parliament of Paris, which had extended over Burgundy, and, in time of peace, over Guienne.

A work has appeared within a few years which throws an abundant light on the judicial system, and indeed on the whole civil polity of France, as well as other countries, during the middle ages. I allude to L'Esprit, Origine, et Progrès des Institutions judiciares des principaux Pays de l'Europe, by M. Meyer, of Amsterdam; especially the first and third volumes. It would have been fortunate had its publication preceded that of the first edition of the present work; as I might have rendered this chapter on the feudal system in many respects more perspicuous and correct. As it is, without availing myself of M. Meyer's learning and acuteness to illustrate the obscurity of these researches, or discussing the few questions upon which I might venture, with deference, to adhere to another opinion, neither of which could conveniently be done on the present occasion, I shall content myself with this general reference to a performance of singular diligence and ability, which no student of these antiquities should neglect. In all essential points I am happy to perceive that M. Meyer's views of the middle ages are not far different from my own. —Note to the fourth edition.

steadiness for two or three centuries, restored their effective power. By escheat or forfeiture, by bequest or purchase, by marriage or succession, a number of fiefs were merged in their increasing domain.[y] It was part of their policy to obtain possession of arrière-fiefs, and thus to become tenants of their own barons. In such cases the king was obliged by the feudal duties to perform homage, by proxy, to his subjects, and engage himself to the service of his fief. But, for every political purpose, it is evident that the lord could have no command over so formidable a vassal.[z]

The reunion of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible. This became at length a fundamental maxim in the law of France. But it does not seem to be much older than the reign of Philip V., who, in 1318, revoked the alienations of his predecessors, nor was it thoroughly established, even in theory, till the fifteenth century.[a] Alienations, however, were certainly very repugnant to the policy of Philip Augustus and St. Louis. But there was one species of infeudation so consonant to ancient usage and prejudice that it could not be avoided upon any suggestions of policy; this was the investiture of younger princes of the blood with considerable

y The word domain is calculated, by a seeming ambiguity, to perplex the reader of French history. In its primary sense, the domain or demesne (dominicum) of any proprietor was confined to the lands in his immediate occupation; excluding those of which his tenants, whether in fief or villenage, whether for a certain estate or at will, had an actual possession, or, in our law-language, pernancy of the profits. Thus the compilers of Domesday-Book distinguish, in every manor, the lands held by the lord in demesne from those occupied by his villeins or other tenants. And in England the word, if not technically, yet in use, is still confined to this sense. But in a secondary acceptation, more usual in France, the domain comprehended all lands for which rent was paid (censives), and which contributed to the regular annual revenue of the proprietor. The great distinction was between lands in demesne and those in fief. A grant of territory, whether by the king or another lord, comprising as well domanial estates and tributary towns as feudal superiorities, was expressed to convey "in dominico quod est in dominico, et in feodo quod est in feodo." Since, therefore, fiefs, even those of the vavassors or inferior tenantry, were not part of the lord's domain, there is, as I said, an apparent ambiguity in the language of historians who speak of the reunion of provinces to the royal domain. This ambiguity, however, is rather apparent than real. When the Duchy of Normandy, for example, is said to have been united by Philip Augustus to his domain, we are not, of course, to suppose that the soil of that province became the private estate of the crown. It continued, as before, in the possession of the Norman barons and their sub-vassals, who had held their estates of the dukes. But it is meant only that the King of France stood exactly in the place of the Duke of Normandy, with the same rights of possession over lands absolutely in demesne, of rents and customary payments from the burgesses of towns and tenants in roture or villenage, and of feudal services from the military vassals. The immediate superiority, and the immediate resort, or jurisdiction, over these devolved to the crown; and thus the duchy of Normandy, considered as a fief, was reunited, or, more properly, merged in the royal domain, though a very small part of the territory might become truly domanial.

z See a memorial on the acquisition of arrière-fiefs by the Kings of France, in Mém. de l'Acad. des Inscript. t. i. by M. Dacier.

a Préface au 15me tome des Ordonnances, par M. Pastoret.

territorial appanages. It is remarkable that the epoch of appanages on so great a scale was the reign of St. Louis, whose efforts were constantly directed against feudal independence. Yet he invested his brothers with the counties of Poitou, Anjou, and Artois, and his sons with those of Clermont and Alençon. This practice, in later times, produced very mischievous consequences.

Under a second class of events that contributed to destroy the spirit of the feudal system we may reckon the abolition of villenage, the increase of commerce and consequent opulence of merchants and artisans, and especially the institutions of free cities and boroughs. This is one of the most important and interesting steps in the progress of society during the middle ages, and deserves particular consideration.

The provincial cities under the Roman empire enjoyed, as is well known, a municipal magistracy, and the right of internal regulation. Nor was it repugnant to the spirit of the Frank or Gothic conquerors to leave them in possession of these privileges. It was long believed, however, that little, if any, satisfactory proof of their preservation, either in France or Italy, could be found; or, at least, if they had ever existed, that they were wholly swept away in the former country during the confusion of the ninth century, which ended in the establishment of the feudal system.

Every town, except within the royal domains, was subject to some lord. In episcopal cities the bishop possessed a considerable authority; and in many there was a class of resident nobility. But this subject has been better elucidated of late years; and it has been made to appear that instances of municipal government were at least not rare, especially in the south of France, throughout the long period between the fall of the western empire and the beginning of the twelfth century,[b] though becoming far more common in its latter part.

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis VI. Noyon, St. Quentin, Laon, and Amiens appear to have been the first that received emancipation at the hands of this prince.[c] The chief towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI.,

b [Note XVIII.]

c Ordonnances des Rois, ubi supra, p. 7. These charters are as old as 1110, but the precise date is unknown.

Louis VII., and Philip Augustus. This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century the custom had prevailed over all France. It has been sometimes imagined that the crusades had a material influence in promoting the erection of communities. Those expeditions would have repaid Europe for the prodigality of crimes and miseries which attended them if this notion were founded in reality. But I confess that in this, as in most other respects, their beneficial consequences appear to me very much exaggerated. The cities of Italy obtained their internal liberties by gradual encroachments, and by the concessions of the Franconian emperors. Those upon the Rhine owed many of their privileges to the same monarchs, whose cause they had espoused in the rebellions of Germany. In France the charters granted by Louis the Fat could hardly be connected with the first crusade, in which the crown had taken no part, and were long prior to the second. It was not till fifty years afterwards that the barons seem to have trod in his steps by granting charters to their vassals, and these do not appear to have been particularly related in time to any of the crusades. Still less can the corporations erected by Henry II. in England be ascribed to these holy wars, in which England had hitherto taken no considerable share.

The establishment of chartered towns in France has also been ascribed to deliberate policy. "Louis the Gross," says Robertson, "in order to create some power that might counterbalance those potent vassals who controlled or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within his own domain." Yet one does not immediately perceive what strength the king could acquire by granting these extensive privileges within his own domains, if the great vassals were only weakened, as he asserts afterwards, by following his example. In what sense, besides, can it be meant that Noyon or Amiens, by obtaining certain franchises, became a power that could counterbalance the Duke of Normandy or Count of Champagne? It is more natural to impute this measure, both in the king and his barons, to their pecuniary exigencies; for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it.[d] It is obvious,

[d] Ordonnances des Rois, t. xi. préface, p. 18 et 50.

however, that the coarser methods of rapine must have grown obsolete, and the rights of the inhabitants of towns to property established, before they could enter into any compact with their lord for the purchase of liberty. Guibert, abbot of St. Nogent, near Laon, relates the establishment of a community in that city with circumstances that, in the main, might probably occur in any other place. Continual acts of violence and robbery having been committed, which there was no police adequate to prevent, the clergy and principal inhabitants agreed to enfranchise the populace for a sum of money, and to bind the whole society by regulations for general security. These conditions were gladly accepted; the money was paid, and the leading men swore to maintain the privileges of the inferior freemen. The bishop of Laon, who happened to be absent, at first opposed this new institution, but was ultimately induced, by money, to take a similar oath; and the community was confirmed by the king. Unluckily for himself, the bishop afterwards annulled the charter; when the inhabitants, in despair at seeing themselves reduced to servitude, rose and murdered him. This was in 1112; and Guibert's narrative certainly does not support the opinion that charters of community proceeded from the policy of government. He seems to have looked upon them with the jealousy of a feudal abbot, and blames the Bishop of Amiens for consenting to such an establishment in his city, from which, according to Guibert, many evils resulted. In his sermons, we are told, this abbot used to descant on "those execrable communities where serfs, against law and justice, withdraw themselves from the power of their lords." *e*

In some cases they were indebted for success to their own courage and love of liberty. Oppressed by the exactions of their superiors, they had recourse to arms, and united themselves in a common league, confirmed by oath, for the sake of redress. One of these associations took place at Mans as early as 1067, and, though it did not produce any charter of privileges, is a proof of the spirit to which ultimately the superior classes were obliged to submit.*f* Several charters bear witness that this spirit of resistance was justified by oppression. Louis VII. frequently declares the tyranny exercised over the

e Hist. Littéraire de la France, t. x. 448, Du Cange, voc. Communia.

f Recueil des Historiens, t. xiv. préface p. 66.

towns to be his motive for enfranchising them. Thus the charter of Mantes, in 1150, is said to be given "pro nimiâ oppressione pauperum:" that of Compiegne, in 1153, "propter enormitates clericorum:" that of Dourlens, granted by the Count of Ponthieu in 1202, "propter injurias et molestias a potentibus terræ burgensibus frequenter illatas." *g*

The privileges which these towns of France derived from their charters were surprisingly extensive; especially if we do not suspect some of them to be merely in confirmation of previous usages. They were made capable of possessing common property, and authorized to use a common seal as the symbol of their incorporation. The more oppressive and ignominious tokens of subjection, such as the fine paid to the lord for permission to marry their children, were abolished. Their payments of rent or tribute were limited both in amount and as to the occasions when they might be demanded; and these were levied by assessors of their own electing. Some obtained an exemption from assisting their lord in war; others were only bound to follow him when he personally commanded; and almost all limited their service to one, or, at the utmost, very few days. If they were persuaded to extend its duration, it was, like that of feudal tenants, at the cost of their superior. Their customs, as to succession and other matters of private right, were reduced to certainty, and, for the most part, laid down in the charter of incorporation. And the observation of these was secured by the most valuable privilege which the chartered towns obtained—that of exemption from the jurisdiction, as well of the royal as the territorial judges. They were subject only to that of magistrates, either wholly elected by themselves, or, in some places, with a greater or less participation of choice in the lord. They were empowered to make special rules, or, as we call them, by-laws, so as not to contravene the provisions of their charter, or the ordinances of the king. *h*

It was undoubtedly far from the intention of those barons who conferred such immunities upon their subjects to relinquish their own superiority and rights not expressly conceded. But a remarkable change took place in the beginning of the

g Ordonnances des Rois, t. xi. préface p. 17.

h Ibid., préfaces aux tomes xi. et xii.; Du Cange, voc. Communia, Hostis; Carpentier, Suppl. ad Du Cange, v. Hostis; Mably, Observations sur l'Hist. de France, l. iii. c. 7.

thirteenth century, which affected, in a high degree, the feudal constitution of France. Towns, distrustful of their lord's fidelity, sometimes called in the king as guarantee of his engagements. The first stage of royal interference led to a more extensive measure. Philip Augustus granted letters of safeguard to communities dependent upon the barons, assuring to them his own protection and patronage.*i* And this was followed up so quickly by the court, if we believe some writers, that in the next reign Louis VIII. pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords.*j* Nothing, perhaps, had so decisive an effect in subverting the feudal aristocracy. The barons perceived, too late, that, for a price long since lavished in prodigal magnificence or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed. The government prudently respected the privileges secured by charter. Philip the Long established an officer in all large towns to preserve peace by an armed police; but though subject to the orders of the crown, he was elected by the burgesses, and they took a mutual oath of fidelity to each other. Thus shielded under the king's mantle, they ventured to encroach upon the neighboring lords, and to retaliate for the long oppression of the commonalty.*k* Every citizen was bound by oath to stand by the common cause against all aggressors, and this obligation was abundantly fulfilled. In order to swell their numbers, it became the practice to admit all who

i Mably, Observations sur l'Hist. de France, l. iii. c. 7.

j Reputabat civitates omnes suas esse, in quibus communiæ essent. I mention this in deference to Du Cange, Mably, and others, who assume the fact as incontrovertible; but the passage is only in a monkish chronicler, whose authority, were it even more explicit, would not weigh much in a matter of law. Beaumanoir, however, sixty years afterwards, lays it down that no one can erect a commune without the king's consent, c. 50, p. 268. And this was an unquestionable maxim in the fourteenth century.—Ordonnances, t. xi. p. 29.

k In the charter of Philip Augustus to the town of Roye in Picardy, we read, If any stranger, whether noble or villein, commits a wrong against the town, the mayor shall summon him to answer for it, and if he does not obey the summons the mayor and inhabitants may go and destroy his house, in which we (the king) will lend them our assistance, if the house be too strong for the burgesses to pull down: except the case of one of our vassals, whose house shall not be destroyed; but he shall not be allowed to enter the town till he has made amends at the discretion of the mayor and jurats. Ordonnances des Rois, t. xi. p. 228. This summary process could only, as I conceive, be employed if the house was situated within the jurisdiction of the commune. See Charter of Crespy, id. p. 253. In other cases the application for redress was to be made in the first instance to the lord of the territory wherein the delinquent resided. But upon his failing to enforce satisfaction, the mayor and jurats might satisfy themselves; liceat justitiam quærere, prout poterunt; that is, might pull down his house provided they could. Mably positively maintains the communes to have had the right of levying war, l. iii. c. 7. And Bréquigny seems to coincide with him. Ordonnances, préface, p. 46; see also Hist. de Languedoc, t. iii. p. 115. The territory of commune was called Pax (p. 185); an expressive word.

came to reside within their walls to the rights of burghership, even though they were villeins appurtenant to the soil of a master from whom they had escaped.[l] Others, having obtained the same privileges, continued to dwell in the country; but, upon any dispute with their lords, called in the assistance of their community. Philip the Fair, erecting certain communes in Languedoc, gave to any who would declare on oath that he was aggrieved by the lord or his officers the right of being admitted a burgess of the next town, upon paying one mark of silver to the king, and purchasing a tenement of a definite value. But the neglect of this condition and several other abuses are enumerated in an instrument of Charles V., containing the complaints made by the nobility and rich ecclesiastics of the neighborhood.[m] In his reign the feudal independence had so completely yielded, that the court began to give in to a new policy, which was ever after pursued: that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebeians to make upon them.

The maritime towns of the south of France entered into separate alliances with foreign states; as Narbonne with Genoa in 1166, and Montpellier in the next century. At the death of Raymond VII., Avignon, Arles, and Marseilles affected to set up republican governments; but they were soon brought into subjection.[n] The independent character of maritime towns was not peculiar to those of the southern provinces. Edward II. and Edward III. negotiated and entered into alliances with the towns of Flanders, to which neither their count nor the King of France were parties.[o] Even so late as the reign of Louis XI. the Duke of Burgundy did not hesitate to address the citizens of Rouen, in consequence of the capture of some ships, as if they had formed an independent state.[p] This evidently arose out of the ancient customs of private

l One of the most remarkable privileges of chartered towns was that of conferring freedom on runaway serfs, if they were not reclaimed by their masters within a certain time. This was a pretty general law. Si quis nativus quietè per unum annum et unum diem in aliquâ villâ privilegiatâ manserit, ita quod in eorum communem gyldam tanquam civis receptus fuerit, eo ipso à villenagio liberabitur. Glanvil, l. v c. 5. The cities of Languedoc had the same privilege. Vaissette, t. iii. p. 528, 530. And the editor of the Ordonnances speaks of it as general, p. 44. A similar custom was established in Germany; but the term of prescription was, in some places at least, much longer than a year and a day, Pfeffel, t. i. p. 294.

m Martenne, Thesaur. Anecd. t. i. p. 1515.

n Velly, t. iv. p. 446, t. v. p. 97.

o Rymer, t. iv. passim.

p Garnier, t. xvii. p. 396.

warfare, which, long after they were repressed by a stricter police at home, continued with lawless violence on the ocean, and gave a character of piracy to the commercial enterprise of the middle ages.

Notwithstanding the forces which in opposite directions assailed the feudal system from the enhancement of royal prerogative, and the elevation of the chartered towns, its resistance would have been much longer, but for an intrinsic decay. No political institution can endure which does not rivet itself to the hearts of men by ancient prejudice or acknowledged interest. The feudal compact had originally much of this character. Its principle of vitality was warm and active. In fulfilling the obligations of mutual assistance and fidelity by military service, the energies of friendship were awakened, and the ties of moral sympathy superadded to those of positive compact. While private wars were at their height, the connection of lord and vassal grew close and cordial, in proportion to the keenness of their enmity towards others. It was not the object of a baron to disgust and impoverish his vavassors by enhancing the profits of seigniory; for there was no rent of such price as blood, nor any labor so serviceable as that of the sword.

But the nature of feudal obligation was far better adapted to the partial quarrels of neighboring lords than to the wars of kingdoms. Customs, founded upon the poverty of the smaller gentry, had limited their martial duties to a period never exceeding forty days, and diminished according to the subdivisions of the fief. They could undertake an expedition, but not a campaign; they could burn an open town, but had seldom leisure to besiege a fortress. Hence, when the kings of France and England were engaged in wars which, on our side* at least, might be termed national, the inefficiency of the feudal militia became evident. It was not easy to employ the military tenants of England upon the frontiers of Normandy and the Isle of France, within the limits of their term of service. When, under Henry II. and Richard I., the scene of war was frequently transferred to the Garonne or the Charente, this was still more impracticable. The first remedy to which sovereigns had recourse was to keep their vassals in service after the expiration of their forty days, at a stipulated rate of pay.[q] But this was

[q] Du Cange, et Carpentier, voc. Hostis.

* The English.

frequently neither convenient to the tenant, anxious to return back to his household, nor to the king, who could not readily defray the charges of an army.[r] Something was to be devised more adequate to the exigency, though less suitable to the feudal spirit. By the feudal law the fief was, in strictness, forfeited by neglect of attendance upon the lord's expedition. A milder usage introduced a fine, which, however, was generally rather heavy, and assessed at discretion. An instance of this kind has been noticed in an earlier part of the present book, from the muster-roll of Philip the Bold's expedition against the Count de Foix. The first Norman kings of England made these amercements very oppressive. But when a pecuniary payment became the regular course of redeeming personal service, which, under the name of escuage, may be referred to the reign of Henry II., it was essential to liberty that the military tenant should not lie at the mercy of the crown.[s] Accordingly, one of the most important provisions contained in the Magna Charta of John secures the assessment of escuage in parliament. This is not renewed in the charter of Henry III., but the practice during his reign was conformable to its spirit.

The feudal military tenures had superseded that earlier system of public defence which called upon every man, and especially every landholder, to protect his country.[t] The relations

[r] There are several instances where armies broke up, at the expiration of their limited term of service, in consequence of disagreement with the sovereign. Thus, at the siege of Avignon in 1226, Theobald Count of Champagne retired with his troops, that he might not promote the king's designs upon Languedoc. At that of Angers, in 1230, nearly the same thing occurred.—M. Paris, p. 308.

[s] Madox, Hist. of Exchequer, c. 16, conceives that escuage may have been levied by Henry I.; the earliest mention of it, however, in a record, is under Henry II. in 1159.—Lyttelton's Hist. of Henry II. vol. iv. p. 13.

[t] Every citizen, however extensive may be his privileges, is naturally bound to repel invasion. A common rising of the people in arms, though not always the most convenient mode of resistance, is one to which all governments have a right to resort. Volumus, says Charles the Bald, ut cujuscunque nostrum homo, in cujuscunque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus pergat; nisi talis regni invasio, quam *Lantweri* dicunt (quod absit), acciderit ut omnis populus illius regni ad eam repellendam communiter pergat. Baluzii Capitularia, t. ii. p. 44. This very ancient mention of the *Landwehr*, or insurrectional militia, so signally called forth in the present age, will strike the reader.

The obligation of bearing arms in defensive warfare was peculiarly incumbent on the freeholder or allodialist. It made part of the trinoda necessitas, in England, erroneously confounded by some writers with a feudal military tenure. But when these latter tenures became nearly universal, the original principles of public defence were almost obliterated, and I know not how far allodial proprietors, where they existed, were called upon for service. Kings did not, however, always dispense with such aid as the lower people could supply. Louis the Fat called out the militia of towns and parishes under their priests, who marched at their head, though they did not actually command them in battle. In the charters of incorporation which towns received the number of troops required was usually expressed. These formed the infantry of the French armies, perhaps more numerous than formidable to an enemy. In the war of the same prince with the Emperor Henry V. all the population of the frontier provinces was called out; for the militia of the counties of Rheims and Châlons is said to have amounted to sixty thousand

of a vassal came in place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth another innovation rather more gradually prevailed, and marks the third period in the military history of Europe. Mercenary troops were substituted for the feudal militia. Undoubtedly there could never have been a time when valor was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak. But we cannot expect to find numerous testimonies of facts of this description.[u] In public national history I am aware of no instance of what may be called a regular army more ancient than the body-guards, or huscarles, of Canute the Great. These select troops amounted to six thousand men, on whom he probably relied to ensure the subjection of England. A code of martial law compiled for their regulation is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe.[v] Harold II. is also said to have had Danish soldiers in pay. But the most eminent example of a mercenary army is that by whose assistance William achieved the conquest of England. Historians concur in representing this force to have consisted of sixty thousand men. He after-

men. Philip IV. summoned one foot-soldier for every twenty hearths to take the field after the battle of Courtrai. (Daniel, Hist. de la Milice Française; Velly, t. iii. p. 62, t. vii. p. 287.) Commissions of array, either to call out the whole population, or, as was more common, to select the most serviceable by forced impressement, occur in English records from the reign of Edward I. (Stuart's View of Society, p. 400); and there are even several writs directed to the bishops, enjoining them to cause all ecclesiastical persons to be arrayed and armed on account of an expected invasion.—Rymer, t. vi. p. 726 (46 E. III.), t. vii. p. 162 (1 R. II.), and t. viii. p. 270 (3 H. IV.).

u The preface to the eleventh volume of Recueil des Historiens, p. 232, notices the word solidarii, for hired soldiers, as early as 1030. It was probably unusual at that time; though in Roger Hoveden, Ordericus Vitalis, and other writers of the twelfth century, it occurs not very unfrequently. We may perhaps conjecture the abbots, as both the richest and the most defenceless, to have been the first to avail themselves of mercenary valor.

v For these facts, of which I remember no mention in English history, I am indebted to the Danish collection of Langebek, Scriptores Rerum Danicarum Medii Ævi. Though the Leges Castrensis Canuti Magni, published by him, t. iii. p. 141, are not in their original statutory form, they proceed from the pen of Sweno, the earliest Danish historian, who lived under Waldemar I., less than a century and a half after Canute. I apply the word huscarle, familiar in Anglo-Saxon documents, to these military retainers, on the authority of Langebek, in another place, t. ii. p. 454. The object of Canute's institutions was to produce an uniformity of discipline and conduct among his soldiers, and thus to separate them more decidedly from the people. They were distinguished by their dress and golden ornaments. Their manners towards each other were regulated; quarrels and abusive words subjected to a penalty. All disputes, even respecting lands, were settled among themselves at their general parliament. A singular story is told, which, if false, may still illustrate the traditionary character of these guards: that, Canute having killed one of their body in a fit of anger, it was debated whether the king should incur the legal penalty of death; and this was only compromised by his kneeling on a cushion before the assembly, and awaiting their permission to rise. T. iii. p. 150.

wards hired soldiers from various regions to resist an invasion from Norway. William Rufus pursued the same course. Hired troops did not, however, in general form a considerable portion of armies till the wars of Henry II. and Philip Augustus. Each of these monarchs took into pay large bodies of mercenaries, chiefly, as we may infer from their appellation of Brabançons, enlisted from the Netherlands. These were always disbanded on cessation of hostilities; and, unfit for any habits but of idleness and license, oppressed the peasantry and ravaged the country without control. But their soldier-like principles of indiscriminate obedience, still more than their courage and field-discipline, rendered them dear to kings, who dreaded the free spirit of a feudal army. It was by such a foreign force that John saw himself on the point of abrogating the Great Charter, and reduced his barons to the necessity of tendering his kingdom to a prince of France.*w*

It now became manifest that the probabilities of war inclined to the party who could take the field with selected and experienced soldiers. The command of money was the command of armed hirelings, more sure and steady in battle, as we must confess with shame, than the patriot citizen. Though the nobility still composed in a great degree the strength of an army, yet they served in a new character; their animating spirit was that of chivalry rather than of feudal tenure; their connection with a superior was personal rather than territorial. The crusades had probably a material tendency to effectuate this revolution by substituting, what was inevitable in those expeditions, a voluntary stipendiary service for one of absolute obligation.*x* It is the opinion of Daniel that in the thirteenth century all feudal tenants received pay, even during their prescribed term of service.*y* This does not appear consonant to the law of fiefs; yet their poverty may often have rendered it impossible to defray the cost of equipment on distant expeditions. A large proportion of the expense must in all cases have fallen upon the lord; and hence that perpetually increas-

w Matt. Paris.

x Joinville, in several passages, intimates that most of the knights serving in St. Louis's crusade received pay, either for their superior lord, if he were on the expedition, or from some other, into whose service they entered for the time. He set out himself with ten knights, whom he afterwards found it difficult enough to maintain.—Collection des Mémoires, t. i. p. 49, and t. ii. p. 53.

y Hist. de la Milice Française, p. 84. The use of mercenary troops prevailed much in Germany during the thirteenth century. Schmidt, t. iv. p. 89. In Italy it was also very common; though its general adoption is to be referred to the commencement of the succeeding age.

ing taxation, the effects whereof we have lately been investigating.

A feudal army, however, composed of all tenants in chief and their vassals, still presented a formidable array. It is very long before the paradox is generally admitted that numbers do not necessarily contribute to the intrinsic efficiency of armies. Philip IV. assembled a great force by publishing the arrière-ban, or feudal summons, for his unhappy expedition against the Flemings. A small and more disciplined body of troops would not, probably, have met with the discomfiture of Courtray. Edward I. and Edward II. frequently called upon those who owed military service, in their invasions of Scotland.[z] But in the French wars of Edward III. the whole, I think, of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore. The rate of pay was so remarkably high, that, unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller gentry, or rich yeomanry of England.[a] This part of Edward's military system was probably a leading cause of his superiority over the French, among whom the feudal tenantry were called into the field, and swelled their unwieldy armies at Crecy and Poitiers. Both parties, however, in this war employed mercenary troops. Philip had 15,000 Italian crossbow-men at Crecy. It had for some time before become the trade of soldiers of fortune to enlist under leaders of the same description as themselves in companies of adventure, passing from one service to another, unconcerned as to the cause in which they were retained. These military adventurers played a more remarkable part in Italy than in France, though not a little troublesome to the latter country. The feudal tenures had at least furnished a loyal native militia, whose duties, though much limited in the extent, were defined by usage and enforced by principle. They gave place, in an

z Rymer, t. iii. p. 173, 189, 199, et alibi sæpius.

a Many proofs of this may be adduced from Rymer's Collection. The following is from Brady's History of England, vol. ii. Appendix, p. 86. The wages allowed by contract in 1346 were, for an earl, 6*s.* 8*d.* per day; for barons and bannerets, 4*s.*; for knights, 2*s.*; for squires, 1*s.*; for archers and hobelers (light cavalry), 6*d.*; for archers on foot, 3*d.*; for Welshmen, 2*d.* These sums multiplied by about 24, to bring them on a level with the present value of money [1818], will show the pay to have been extremely high. The cavalry of course, furnished themselves with horses and equipments, as well as arms, which were very expensive. See too Book I., p. 62, of this volume.

evil hour for the people and eventually for sovereigns, to contracts with mutinous hirelings, generally strangers, whose valor in the day of battle inadequately redeemed their bad faith and vexatious rapacity. France, in her calamitous period under Charles VI. and Charles VII., experienced the full effects of military licentiousness. At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war. Perhaps few measures have ever been more popular, as few certain have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII. in 1444.[b] These may justly pass for the earliest institution of a standing army in Europe, though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities, which were seldom long intermitted. Fifteen companies were composed each of a hundred men at arms, or lancers; and, in the language of that age, the whole body was one thousand five hundred lances. But each lancer had three archers, a coutiller, or soldier armed with a knife, and a page or valet attached to him, all serving on horseback —so that the fifteen companies amounted to nine thousand cavalry.[c] From these small beginnings, as they must appear in modern times, arose the regular army of France, which every succeeding king was solicitous to augment. The ban was sometimes convoked, that is, the possessors of fiefs were called upon for military service in subsequent ages; but with more of ostentation than real efficiency.

The feudal compact, thus deprived of its original efficacy, soon lost the respect and attachment which had attended it. Homage and investiture became unmeaning ceremonies; the incidents of relief and aid were felt as burdensome exactions. And indeed the rapacity with which these were levied, especially by the Norman sovereigns and their barons, was of itself sufficient to extinguish all the generous feelings of vassalage. Thus galled, as it were, by the armor which he was compelled to wear, but not to use, the military tenant of England looked

b The estates at Orleans in 1439 had advised this measure, as is recited in the preamble of the ordinance. Ordonnances des Rois, t. xii. p. 312. Sismondi observes (vol. xiii. p. 352) that very little is to be found in historians about the establishment of these compagnies d'ordonnance, though the most important event in the reign of Charles VII. The old soldiers of fortune who pillaged the country either entered into these companies or were disbanded, and after their dispersion were readily made amenable to the law. This writer is exceedingly full on the subject.

c Daniel, Hist. de la Milice Française, p. 266; Villaret, Hist. de France, t. xv. p. 394.

no longer with contempt upon the owner of lands in socage, who held his estate with almost the immunities of an allodial proprietor. But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures till the restoration of Charles II. In France the fiefs of noblemen were very unjustly exempted from all territorial taxation, though the tailles of later times had, strictly speaking, only superseded the aids to which they had been always liable. The distinction, it is well known, was not annihilated till that event which annihilated all distinctions, the French revolution.

It is remarkable that, although the feudal system established in England upon the Conquest broke in very much upon our ancient Saxon liberties—though it was attended with harsher servitudes than in any other country, particularly those two intolerable burdens, wardship and marriage—yet it has in general been treated with more favor by English than French writers. The hardiness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen; while, from an opposite feeling, the French have been shocked at that aristocratic independence which cramped the prerogatives and obscured the lustre of their crown. Yet it is precisely to this feudal policy that France is indebted for that which is ever dearest to her children, their national splendor and power. That kingdom would have been irretrievably dismembered in the tenth century, if the laws of feudal dependence had not preserved its integrity. Empires of unwieldy bulk, like that of Charlemagne, have several times been dissolved by the usurpation of provincial governors, as is recorded both in ancient history and in that of the Mahometan dynasties in the East. What question can there be that the powerful dukes of Guienne or counts of Toulouse would have thrown off all connection with the crown of France, when usurped by one of their equals, if the slight dependence of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society, under the grandchildren of Charlemagne, which we must always keep in mind, if we would appreciate the effects of the feudal system upon the

welfare of mankind. The institutions of the eleventh century must be compared with those of the ninth, not with the advanced civilization of modern times. If the view that I have taken of those dark ages is correct, the state of anarchy which we usually term feudal was the natural result of a vast and barbarous empire feebly administered, and the cause rather than effect of the general establishment of feudal tenures. These, by preserving the mutual relations of the whole, kept alive the feeling of a common country and common duties, and settled, after the lapse of ages, into the free constitution of England, the firm monarchy of France, and the federal union of Germany.

The utility of any form of polity may be estimated by its effect upon national greatness and security, upon civil liberty and private rights, upon the tranquillity and order of society, upon the increase and diffusion of wealth, or upon the general tone of moral sentiment and energy. The feudal constitution was certainly, as has been observed already, little adapted for the defence of a mighty kingdom, far less for schemes of conquest. But as it prevailed alike in several adjacent countries, none had anything to fear from the military superiority of its neighbors. It was this inefficiency of the feudal militia, perhaps, that saved Europe during the middle ages from the danger of universal monarchy. In times when princes had little notion of confederacies for mutual protection, it is hard to say what might not have been the successes of an Otho the Great, a Frederic Barbarossa, or a Philip Augustus, if they could have wielded the whole force of their subjects whenever their ambition required. If an empire equally extensive with that of Charlemagne, and supported by military despotism, had been formed about the twelfth or thirteenth centuries, the seeds of commerce and liberty, just then beginning to shoot, would have perished, and Europe, reduced to a barbarous servitude, might have fallen before the free barbarians of Tartary.

If we look at the feudal polity as a scheme of civil freedom, it bears a noble countenance. To the feudal law it is owing that the very names of right and privilege were not swept away, as in Asia, by the desolating hand of power. The tyranny which, on every favorable moment, was breaking through all barriers, would have rioted without control, if, when the people were poor and disunited, the nobility had not been brave and

free. So far as the sphere of feudality extended, it diffused the spirit of liberty and the notions of private right. Everyone I think will acknowledge this who considers the limitations of the services of vassalage, so cautiously marked in those law-books which are the records of customs, the reciprocity of obligation between the lord and his tenant, the consent required in every measure of a legislative or a general nature, the security, above all, which every vassal found in the administration of justice by his peers, and even (we may in this sense say) in the trial by combat. The bulk of the people, it is true, were degraded by servitude; but this had no connection with the feudal tenures.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt that they were perpetuated by so convenient an institution, which indeed owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcilable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth and the improvement of those arts which mitigate the evils or abridge the labors of mankind.

But as a school of moral discipline the feudal institutions were perhaps most to be valued. Society had sunk, for several centuries after the dissolution of the Roman empire, into a condition of utter depravity, where, if any vices could be selected as more eminently characteristic than others, they were falsehood, treachery, and ingratitude. In slowly purging off the lees of this extreme corruption, the feudal spirit exerted its ameliorating influence. Violation of faith stood first in the catalogue of crimes, most repugnant to the very essence of a feudal tenure, most severely and promptly avenged, most branded by general infamy. The feudal law-books breathe throughout a spirit of honorable obligation. The feudal course of jurisdiction promoted, what trial by peers is peculiarly calculated to promote, a keener feeling and readier perception of moral as well as of legal distinctions. And as the judgment and sympathy of mankind are seldom mistaken, in these great points of veracity and justice, except through the temporary

success of crimes, or the want of a definite standard of right, they gradually recovered themselves when law precluded the one and supplied the other. In the reciprocal services of lord and vassal there was ample scope for every magnanimous and disinterested energy. The heart of man, when placed in circumstances which have a tendency to excite them, will seldom be deficient in such sentiments. No occasions could be more favorable than the protection of a faithful supporter, or the defence of a beneficent suzerain, against such powerful aggression as left little prospect except of sharing in his ruin.

From these feelings engendered by the feudal relation has sprung up the peculiar sentiment of personal reverence and attachment towards a sovereign which we denominate loyalty; alike distinguishable from the stupid devotion of Eastern slaves, and from the abstract respect with which free citizens regard their chief magistrate. Men who had been used to swear fealty, to profess subjection, to follow, at home and in the field, a feudal superior and his family, easily transferred the same allegiance to the monarch. It was a very powerful feeling which could make the bravest men put up with slights and ill-treatment at the hands of their sovereign; or call forth all the energies of disinterested exertion for one whom they never saw, and in whose character there was nothing to esteem. In ages when the rights of the community were unfelt this sentiment was one great preservative of society; and, though collateral or even subservient to more enlarged principles, it is still indispensable to the tranquillity and permanence of every monarchy. In a moral view loyalty has scarcely perhaps less tendency to refine and elevate the heart than patriotism itself; and holds a middle place in the scale of human motives, as they ascend from the grosser inducements of self-interest to the furtherance of general happiness and conformity to the purposes of Infinite Wisdom.

NOTES TO BOOK II.

Note I.

It is almost of course with the investigators of Teutonic antiquities to rely with absolute confidence on the authority of Tacitus, in his treatise De Moribus Germanorum. And it is indeed a noble piece of eloquence—a picture of manners so boldly drawn, and, what is more to the purpose, so probable in all its leading characteristics, that we never hesitate, in reading, to believe. It is only when we have closed the book that a question may occur to our minds, whether the Roman writer, who had never crossed the Rhine, was altogether a sufficient witness for the internal history, the social institutions, of a people so remote and so dissimilar. But though the sources of his information do not appear, it is manifest that they were copious. His geographical details are minute, distinct, and generally accurate. Perhaps in no instance have his representations of ancient Germany been falsified by direct testimony, if in a few circumstances there may be reason to suspect their exact faithfulness.

In the very slight mention of German institutions which I have made in the text there can be nothing to excite doubt. They are what Tacitus might easily learn, and what, in fact, we find confirmed by other writers. But when he comes to a more exact description of the social constitution, and of the different orders of men, it may not be unreasonable to receive his testimony with a less unhesitating assent than has commonly been accorded to it. A sentence, a word of Tacitus has passed for conclusive; and no theory which they contradict would be admitted. A modern writer, however, has justly pointed out that his informers might easily be deceived about the social institutions of the tribes beyond the Rhine; and, in fact, it is not on Tacitus himself, but on these unknown authorities, that we rely for the fidelity of his representations. We may readily conceive, by our own experience, the difficulty of obtaining a clear and exact knowledge of laws, customs, and manners for which we have no corresponding analogies. "Let us," says Luden to his countrymen, "ask an enlightened Englishman who speaks German concerning the political institutions of his country, and it will be surprising how little we shall understand from him. Ask him to explain what is a freeman, a freeholder, a copyholder, or a yeoman, and we shall find how hard it is to make national institutions and relations intelligible to a foreigner." (Luden, Geschichte des Deutschen Volkes, vol. i. p. 702.)

This is of course not designed to undervalue the excellent work of Tacitus, to which almost exclusively we are indebted for any acquaintance with the progenitors of the Anglo-Saxons and the Franks, but to point out a general principle, which may be far better applied to inferior writers, that they give a color of their own country to their descriptions of foreign manners, and especially by the adoption of names only analogically appropriate. Thus the words *servus, libertinus, ingenuus, nobilis,* are not necessarily to be understood in a Roman sense when Tacitus employs them in his treatise on Germany. *Servus* is in Latin a slave; but the German described by him under that name is the *lidus,* subject to a lord, and liable to payments, but not without limit, as he himself explains. "Frumenti modum dominus, aut pecoris, aut vestis, ut colono, imperat; et servus hactenus paret." Here *colonus,* in the age

of Tacitus, was as much a wrong word in one direction as *servus* was in another. For we believe that the *colonus* of early Rome was a tenant, or farmer, yielding rent, but absolutely a free man;[a] though in the third century, after barbarians had been settled on lands in the empire, we find it applied to a semi-servile condition. It is more worthy to be observed that his account of the kingly office among the Germans is not quite consistent. Sometimes it appears as if peculiar to certain tribes, "iis gentibus quæ regnantur" (c. 25); and here he seems to speak of the power as very great, opposing it to liberty; while at other times we are led to suppose an aristocratic senate and an ultimate right of decision in the people at large, with a very limited sovereign at the head (c. 7, 11, &c.). This triple constitution has been taken by Montesquieu for the foundation of our own in the well-known words—"Ce beau système a été trouvé dans les bois."

Note II.

It is not easy to explain these partitions made by the barbarous nations on their settlement in the empire; and, what would be still more remarkable if historians were not so defective in that age, we find no mention of such partitions in any records, excepting their own laws and a few documents of the same class. Montesquieu says, "Ces deux tiers n'étaient pas que dans certains quartiers qu'on leur assigna." (l. 30, c. 8.) Troja seems to hold the same opinion as to the first settlement of the Burgundians in Gaul, but admits a general division in 471: Storia d'Italia nel medio evo (iii. 1293). It is indeed impossible to get over the proof of such a partition, or at least one founded on a general law, arising from the fifty-fourth section of the Burgundian code: "Eodem tempore quo populus noster mancipiorum tertiam, et duas terrarum partes accepit." This code was promulgated by Gundobald early in the sixth century. It contains several provisions protecting the Roman in the possession of his third against any encroachment of the *hospes*, a word applied indifferently to both parties, as in common Latin, to *host* and *guest*.

The word *sortes*, which occurs both with the Burgundians and Visigoths, has often been referred to the general partition, on the hypothesis that the lands had been distributed by lot. This perhaps has no evidence except the erroneous inference from the word *sors*, but it is not wholly improbable. Savigny, indeed, observes that both the barbarian and the Roman estates were called *sortes*, referring to Leges Visigothorum, lib. x. tit. 2, l. 1, where we find, in some editions, "sortes Gothicæ vel Romanæ;" but all the manuscripts, according to Bouquet, read "sortes Gothicæ et tertia Romanorum," which, of course, gives a contrary sense. (Rec. des Hist. iv. 430).* It seems, from some texts of the Burgundian law, that the whole territory was not partitioned at once; because, in a supplement to the code not much before 520, provision is made for new settlers, who were to receive only a moiety. "De Romanis hoc ordinavimus, ut non amplius a Burgundionibus qui infra venerunt, requiratur, quam, ut præsens necessitas

a Vide Facciolati Lexicon.

* Procopius says, of the division made by Genseric in Italy, Λίβυας τοὺς ἄλλους ἀφείλετο μὲν τοὺς ἀγροὺς. οἱ πλεῖστοι τε ἦσαν καὶ ἄριστοι, ἐς δὲ τὸ τῶν Βανδίλων διένειμεν ἔθνος· καὶ ἀπ' αὐτοῦ κλῆροι Βανδίλων οἱ ἀγροὶ οὗτοι ἐς τόδε καλοῦνται τοῦ χρόνου. . . . . καὶ τὰ μὲν χωρία ξύμπαντα ὅσα τοῖς τε παῖσι καὶ τοῖς ἄλλοις Βανδίλοις Γιζέριχος παραδεδώκει, οὐδεμία, φόρου ἀπαγωγῆς ὑποτέλη ἐκέλευσεν εἶναι — De Bello Vandal., l. i. c. 8. This passage gives no confirmation to the hypothesis of a partition by lot, but the contrary; and though we cannot reason absolutely from the analogy of Africa to Gaul, it is natural to interpret κλῆροι Βανδίλων and sortes Salicæ in the same manner.

fuerit, medietas terræ. Alia vero medietas cum integritate mancipiorum a Romanis teneatur; nec exinde ullam violentiam patiantur." (Leges Burgundionum, Additamentum Secundum, c. 11.) In this, as in the whole Burgundian law, we perceive a tenderness for the Roman inhabitant, and a continual desire to place him, as far as possible, on an equal footing with his new neighbor. The reason assigned for the partition is necessity; the Burgundian must live. It is true that to assign him two thirds of the land strikes us as an enormous spoliation. Montesquieu supposes that the barbarian took open and pasture lands, leaving the tilth to the ancient possessor, and that this accounts for the smaller proportion of slaves which he required (l. 30, c. 9). Sismondi has made a similar suggestion. It is dwelt upon by Troja, that the Lombards, taking a third of the produce instead of a portion of the lands themselves, reduced all the original possessors to the rank of tributaries. In none of the barbarous kingdoms was the Roman of so low a *status* as in theirs. But it may be said that the ancient law of nations, exercised by none more unsparingly than by the Romans themselves in Italy, confiscated the whole soil; that, if the Visigoths and Burgundians spared one third, if the Franks left some Roman possessors, this was an indulgent relaxation of their right. And this would be an excuse if we could for a moment look upon the barbarians as having a just cause of war. The contrary, however, is manifest in almost every case.

M. Fauriel thinks it probable that the Franks made, like the other barbarians, a partition, more or less regular, of the Roman lands in northern France. (Hist. de la Gaule Méridionale, ii. 34.) Guizot takes a somewhat different view, and conceives that each chief took what best suited him, and lived there with his followers about him. (Civilis. en France, Leçon 32.) But if the Franks adopted so aristocratic a division as to throw the lands which they occupied into the hands of a few proprietors, they must have gone on very different principles from the other nations, among whom we should infer, from their laws, a much greater equality to have been preserved. It seems, however, most probable on the whole, considering the silence of historians and laws, that the Franks made no such systematic distribution of lands as the earlier barbarians. They were, perhaps, less numerous, and, being at first less civilized, would feel more reluctance at submitting to any fixed principle of appropriation. That they dispossessed many of the Roman owners on the right bank of the Loire cannnot well be doubted. For, though Raynouard, who treads in the steps of Dubos, denies that they took any but fiscal lands, which had belonged to the imperial domains (Hist. du Droit Municipal, i. 256), Franks were surely as little disposed, and as little able, to live without lands as Burgundians, and they were a rougher people.[b] Yet both with respect to them and the other barbarians we may observe that the spoliation was not altogether so ruinous as would naturally be presumed. In consequence of the long decline and depopulation of the empire, the fruit of fiscal oppression, of frequent invasion, and civil wars, we may add also of pestilences and unfavorable seasons, much land had gone out of cultivation in Gaul; and though the proportion taken by the Goths and Burgundians was enormous, they probably occupied, in great measure, what the Roman proprietor had not the means of tilling.

This subject, after all, is by no means clear of embarrassment, especially as regards the Visigothic and Burgundian partitions. We are

[b] M. Lehuerou supposes that the Franks, who served the empire in Gaul under the predecessors of Clovis, had received lands like the Burgundians and Visigoths: so that they were already in a great measure provided for, and that their subsequent acquisitions would be at the expense of the nations which they conquered. (Instit. Merov. i. 237, 268.) But the private estates of the Franks seem to have been principally in the north of France.

driven to suppose a dispersion of these conquering nations among their subjects, each man living separately on his *sors*, contrary to the policy of all invaders; we are, apparently, to presume an equality of numbers between the Roman possessors and the barbarians, so that each should have his own *hospes*. The latter hypothesis may, perhaps, be dispensed with, or considerably modified; but I do not see how to get rid of the former.

Note III.

The Salic law exists in two texts: one purely Latin, of which there are fifteen manuscripts; the other mingled with German words, of which there are three. Most have considered the latter to be the original; the manuscripts containing it are entitled *Lex Salica antiquissima*, or *vetustior;* the others generally run, *Lex Salica recentior*, or *emendata*. This seems to create a presumption. But M. Wraida, who published a history of the Salic law in 1808, inclines to think the pure Latin older than the other. M. Guizot adopts the same opinion (Civilisation en France, Leçon 9). M. Wraida refers its original enactment to the period when the Franks were still on the left bank of the Rhine; that is, long before the reign of Clovis. And this seems an evident inference from what is said in the prologue to the law, written long afterwards. But of course it cannot apply to those passages which allude to the Romans as subjects, or to Christianity. M. Guizot is of opinion that it bears marks of an age when the Franks had long been mingled with the Roman population. This is consistent with its having been revised by the sons of Clovis, Childebert, and Clotaire, as is asserted in the prologue. One manuscript has the words—"Hoc decretum est apud regem et principes ejus, et apud cunctum populum Christianum qui infra regnum Merwingorum consistunt." Neither Wraida nor Guizot think it older in its present text than the seventh century; and as Dagobert I. appears in the prologue as one reviser, we may suppose him to be the king mentioned in the words just quoted. It is to be observed, however, that two later writers, M. Pertz, in Monumenta Germaniæ Historica, and M. Pardessus, in Mém. de l'Acad. des Inscriptions, vol. xv. (Nouvelle Série), have entered anew on this discussion, and do not agree with M. Wraida, nor wholly with each other. M. Lehuerou is clearly of opinion that, in all its substance, the Salic code is to be referred to Germany for its birthplace, and to the period of heathenism for its date. (Institutions Mérovingiennes, p. 83.)

The Ripuarian Franks Guizot, with some apparent reason, takes for the progenitors of the Austrasians; the Salian, of the Neustrians. The former were settled on the left bank of the Rhine, as *Læti*, or defenders of the frontier, under the empire. These tribes were united under one government through the assassination of Sigebert at Cologne, in the last years of Clovis, who assumed his crown. Such a theory might tend to explain the subsequent rivalry of these great portions of the Frank monarchy, though it is hardly required for that purpose. The Ripuarian code of law is referred by Guizot to the reign of Dagobert; Eccard, however, had conceived it to have been compiled under Thierry, the eldest son of Clovis. (Rec. des. Hist. vol. iv.) It may still have been revised by Dagobert. "We find in this," says M. Guizot, "more of the Roman law, more of the royal and ecclesiastical power; its provisions are more precise, more extensive, less barbarous; it indicates a further step in the transition from the German to the Roman form of social life." (Civil. en France, Leçon 10.)

The Burgundian law, though earlier than either of these in their recensions, displays a far more advanced state of manners. The Burgundian and Roman are placed on the same footing; more is borrowed

from the civil law; the royal power is more developed. This code remained in force after Charlemagne; but Hincmar says that few continued to live by it. In the Visigothic laws enacted in Spain, to the exclusion of the Roman, in 642, all the barbarous elements have disappeared; it is the work of the clergy, half ecclesiastical, half imperial.

It has been remarked by acute writers, Guizot and Troja, that the Salic law does not answer the purpose of a code, being silent on some of the most important regulations of civil society. The former adds that we often read of matters decided "secundum legem Salicam," concerning which we can find nothing in that law. He presumes, therefore, that it is only a part of their jurisprudence. Troja (Storia d'Italia nel medio evo, v. 8), quoting Buat for the same opinion, thinks it probable that the Franks made use of the Roman law where their own was defective. It may perhaps be not less probable than either hypothesis that the judges gradually introduced principles of decision which, as in our common law, acquired the force of legislative enactment. The rules of the Salic code principally relate to the punishment or compensation of crimes; and the same will be found in our earliest Anglo-Saxon laws. The object of such written laws, with a free and barbarous people, was not to record their usages, or to lay down rules which natural equity would suggest as the occasion might arise, but to prevent the arbitrary infliction of penalties. Chapter lxii., "On Successions," may have been inserted for the sake of the novel provision about Salic lands, which could not have formed a part of old Teutonic customs.

Note IV.

The position of the former inhabitants, after the conquest of Gaul by the Burgundians, the Visigoths, and the Franks, both relatively to the new monarchies and to the barbarian settlers themselves, is a question of high importance. It has, of course, engaged the philosophical school of the present day, and has led to much diversity of hypotheses. The extreme poles are occupied, one by M. Raynouard in his Hist. du Droit Municipal, and by a somewhat earlier writer, Sir Francis Palgrave, who, following the steps of Dubos, bring the two nations, conquerors and conquered, almost to an equality, as the common subjects of a sovereign who had assumed the prerogatives of a Roman emperor; and, on the opposite side, by Signor Troja,[a] and by M. Thierry, who finds no closer analogy for their relative conditions than that of the Greeks and Turks in the days that have lately gone by. "It is no more a proof," he contends, "that the Roman natives were treated as free, because a few might gain the favor of a despotic court, than that the Christian and Jew stand on an even footing with the Mussulman, because an Eastern Sultan may find his advantage in employing some of either religion." (Lettres sur l'Hist. de France, Lett. vii.) This is not quite consistent with his language in a later work: "Sous le règne de la première race se montrent deux conditions de liberté: la liberté par excellence, qui est la condition du Franc; et la liberté du second ordre, le droit de cité romaine." (Récits des Temps Mérovingiens, i. 242.—Bruxelles, 1840.)

It is, however, as it seems to me, and as the French writers have generally held, impossible to maintain either of these theories. The

a La Storia di Francia sotto i rè della prima razza può dirsi non consistere che negli esempj delle oppressioni de' Franchi sopra i cittadini Romani, e della generosa protezione de' vesçovi o Romani o Franchi. (Storia d' Italia, Vol. i. part v. p. 421.) This is not borne out by history. We find no oppression of Romans by Franks, though much by Frank kings. The conquerors may have been nationally insolent; but this is not recorded.

Roman "conviva regis" (by which we may perhaps better understand one who had been actually admitted to the royal table, thus bearing an analogy to the Frank Antrustion, than what I have said in the text, one of a rank not unworthy of such an honor)[b] was estimated in his weregild at half the price of the barbarian Antrustion, the highest known class at the Merovingian court, and above the common allodial proprietor. But between two such landholders the same proportion subsisted; the Frank was valued twice as high as the Roman; but the Roman proprietor was set more than as much above the tributary, or semi-servile husbandman, whose nation is not distinguished by the letter of the Salic code. We have, therefore, in this notorious distinction, subordination without servitude; exactly what the circumstances of the conquest, and the general relation of the barbarians to the empire, would lead us to anticipate, and what our historical records unequivocally confirm. The oppression of the people, which Thierry infers from the history of Gregory of Tours, under Gontran and Chilperic, was on the part of violent and arbitrary princes, not of the Frank nation; nor did the latter by any means escape it. It is true that the civil wars of the early Merovingian kings were most disastrous, especially in Aquitaine, and of course the native inhabitants suffered most; yet this is very distinguishable from a permanent condition of servitude.

"The Romans," Sir F. Palgrave has said, "retained their own laws. Their municipal administration was not abrogated or subverted; and wherever a Roman population subsisted, the barbarian king was entitled to command them with the prerogatives that had belonged to the Roman emperors." (Rise and Progress of the English Commonwealth, vol. i. p. 362.) In this I demur only to the word *entitled*, which seems designed to imply something more than the right of the sword. But this is the right, and I can discern no real evidence of any other, which Clovis, and Clotaire, and Chilperic exercised; very like, of course, to the prerogatives of the Roman emperors, since one despotism must be akin to another; and a provincial of Gaul, whose ancestors had for centuries obeyed an unlimited monarch, could not claim any better privileges by becoming the subject of a conqueror. It is universally agreed, at least I apprehend so, that the Roman, as a mere possessor, and independently of any personal dignity with which he might have been honored, did not attend the national assemblies in the Field of March; nor had he any business at the *placitum* or *mallus* of the count among the Rachimburgii, or freeholders, who there determined causes according to their own jurisprudence, and transacted other business relating to their own nation. The kings were always styled merely "Reges Francorum:"[c] whenever, in Gregory of Tours' history, the popular will is expressed, it is by the Franks; no other nation separately, nor the Franks as blended with any other nation, appear in his pages to have acted for themselves.

It must be almost unnecessary to remind the reader that the word Roman is uniformly applied, especially in the barbarian laws, to the Gaulish subjects of the empire, whose allegiance had been transferred, more or less reluctantly, but always through conquest, to the three barbarian monarchies, two of which were ultimately subverted by the Franks. But it is only in two senses that this can be reckoned a proper

b I do not give this as very highly probable: *conviva regis* seems an odd phrase; but it may have included all the senatorial families, who evidently made a noble class among the Romans.

c One instance of an apparent exception, for leading me to which I am indebted to Mr. Spence (Laws of Europe, p. 240), has met my eyes. Dagobert I. calls himself, in an instrument found in Vita Beati Martini, apud Duchesne, i. 655, "Rex Francorum et *populi Romani princeps*." The authenticity of this charter deserves to be considered. But, supposing it to be genuine, it does not go a great way towards the imperial style.

appellation; one, inasmuch as privileges of Roman citizenship had been extended to the whole of Gaul by the emperors; and another, as applicable, with more correctness, to that population of Roman or Italian descent which had gradually settled in the cities. This, during so many ages, must have become not inconsiderable; the long continuance of the same legions in the province, the wealth and luxury of many cities, the comparative security, up to the close of the fourth century, from military revolution and civil war, the facility, perhaps, of purchasing lands, would naturally create a respectable class, to whose highly civilized manners the records of the fourth and fifth centuries especially bear witness.[d] The Latin language became universal in cities; and if in country villages some remains of the Celtic might linger, they have left very few traces behind.

Sismondi has indeed gone much too far when he infers, especially from this disuse of the old language, an almost complete extinction of the Gaulish population. And for this he accounts by their reduction to servitude, by the exactions of their new lords, and the facility of purchasing slaves in the markets of the empire (vol. i. p. 84.) But such a train of events is wholly without evidence; without at least any evidence that has been alleged. We do not know that the peasantry were ever proprietors of the soil which they cultivated before the Roman invasion, but may much rather believe the contrary from the language of Cæsar—" Plebs pæne servorum habetur loco." We do not know that they fell into a worse condition afterwards. We do not know that they were oppressed in a greater degree than other subjects of Rome, not surely so as to extinguish the population. We may believe that slaves were occasionally purchased, according to the usage of the empire, without denying the existence of *coloni*, indigenous and personally free, of whom the Theodosian code is so full. Nor is it evident why even serfs may not have been of native as easily as of foreign origin. All this is presumed by Sismondi, because the Latin language, and not the Celtic, is the basis of French. And a similar hypothesis must, by parity of reasoning, be applied to the condition of Spain during the centuries of Roman dominion. But it is assumed the more readily, through the tendency of this eminent writer to place in the worst light, what seldom can be placed in a very favorable one, the social institutions and usages of mankind. The change of language is no doubt remarkable. But we may be deceived by laying too much stress on this single circumstance in tracing the history of nations. It is very difficult to lay down a rule as to the tendency of one language to gain ground upon another. Some appear in their nature to be aggressive; such is the Latin, and probably the Arabic. But why is it that so much of the Wallachian language, and even its syntax,[e] comes from Latin, in consequence of a merely military occupation, while a more lasting possession of Britain (where flourishing colonies were filled with Roman inhabitants, and the natives borrowed in some degree the arts and manners of their conquerors, connected with them also by religion in the latter part of their dominion) did not hinder the preservation of the original Celtic idiom in Wales, with very slight infusion of Latin? Why is it that innumerable Arabic words, and even some Arabic sounds of letters, are found in the Castilian language, the language of a people foreign and hostile, while scarcely a trace is left of the Visigothic tongue, that of

d Salvian, in the middle of the fifth century, descants on the beauties of Aquitaine; "Adeo illic omnis admodum regio aut intertexta vineis, aut florulenta pratis, aut distincta culturis, aut consita pomis, aut amœnata lucis, aut irrigata fontibus, aut interfusa fluminibus, aut circumdata messibus erat, ut vere possessores et domini terræ illius non tam soli illius portionem quam paradisi imaginem possedisse videantur." (De Gubernat Dei. lib. vii. p. 299, edit. 1611.)

e Vid. Lauriani Tentamen Criticum in linguam Wallachicam. Vienn. 1840.

their fathers; so that for one word, it is said, of Teutonic origin remaining in Spain, there are ten in Italy, and a hundred in France? *f* If we were to take Sismondi literally, the barbarians must have found nothing in Gaul but a Roman or Romanized aristocracy, surrounded by slaves; and these as much imported, or the offspring of importation, as the negroes in America. This is rather a humiliating origin, an *illud quod dicere nolo*, for the French nation. For it is the French nation that is descended from the inhabitants of Gaul at the epoch of the barbarian conquest.

We have, however, a strong ethnographical argument against this imaginary depopulation, in the national characteristics of the French. A brilliant and ingenious writer has well called our attention to the Celtic element that, under all the modifications which difference of race, political constitutions, and the stealthy progress of commerce and learning have brought in, still distinguishes the Frenchman: "La base originaire, celle qui a tout reçu, tout accepté, c'est cette jeune molle et mobile race de Gaels, brilliante, sensuelle, et légère, prompte à apprendre, prompte à dédaigner, avide des choses nouvelles. Voilà l'élément primitif, l'élément, perfectible." (Michelet, Hist. de France, i. 156.) This is very good, and we cannot but see the resemblance to the Celtic character. Michelet goes afterwards too far, and endeavors to show that a great part of the French language is Celtic; failing wholly in his quotations from early writers, which either relate to the period immediately subsequent to the Roman conquest, or to the *lingua Romana rustica* which ultimately became French. It is nevertheless true that a certain number of Celtic words have been retained in French, as has been shown even of Visigothic by M. Fauriel. He has found 3,000 words in Provençal, which are not Latin. All of these which are not Gothic, Iberian, Greek, or Arabic may be reckoned Celtic; and though the former languages can have left few traces in northern French, we may presume the last to have been retained in a scarcely less degree than in the Provençal dialect. (Ampère, Hist. Litt. de la France, vol. i. p. 34.) Many French monosyllables are Celtic. But if we try to read any French of the twelfth century, we shall feel no doubt that a vast majority of words are derived from the Latin; and it may be added that the terms of rural occupation, and generally of animals, are full as much Latin as those more familiar in towns.

The cities of Gaul were occupied probably by a more mingled population than the villages. In the cities dwelt the more ancient and wealthy families, called senators, and distinct, as far as we can see our way in a very perplexed inquiry, from the ordinary *curiales*, or decurions. It is true that these also are sometimes called senators; but the word has not, as Guizot observes (Collect. des Mémoires, i. 247), in Gregory and other writers, a precise sense. Families were often elevated to the senatorial rank by the emperors, which gave their members the title of *clarissimi*; and these were probably meant by Gregory, in the expression *è primis Galliarum senatoribus*, which naturally must be rendered—"of the first Gaulish nobility." The word is several times employed by him in what seems the same sense. It is, however, also used, as Guizot and Raynouard think, for the highest class of *curiales* who had served municipal offices. But more will be said of this in another note.

Sismondi has remarked (i. 198) that in the lives of the saints, during the Merovingian period, most part of whom were of Roman descent, it is generally mentioned that they were of good family. The Church afforded the means of preserving their respectability; and thus (without much weight in the monarchy, and often with diminished patrimony,

f Edinb. Review, vol. xxi. p. 109.

but in return less oppressed by taxation than under the imperial fisc, deriving also a reflected importance from the bishop when he was a Roman, and sheltered by his protection) this class of the native inhabitants held not only a free but an honorable position. Yet this was still secondary. In a free commonwealth the exclusion from political rights, by a broad line of legal separation, brings with it an indelible sense of inferiority. But this inferiority is not allowed by all our inquirers.

"The nations who were unequal before the law soon became equal before the sovereign, if not in theory yet in practice; and the children of the companions of Clovis were subjected, with few and not very material exceptions, to the same positive dominion as the descendants of the proconsul or the senator. It is not difficult to form plausible conjectures concerning the causes of this equalization; nor are the means by which it was effected entirely concealed. Considered in relation to the Romans, the Franks, for we will continue to instance them, constituted a distinct state, but, compared to the Romans, a very small one; and the individuals composing it, dispersed over Gaul, were almost lost among the tributaries. Experience has shown that whenever a lesser or poorer dominion is conjoined, in the person of the same sovereign, to a greater or more opulent one, the minuter mass is always in the end subjugated by the larger." (Rise and Progress of the English Commonwealth, vol. i. p. 363.)

Such is, in a few words, the view taken of the Merovingian history by a very learned writer, Sir F. Palgrave. And, doubtless, the concluding observation is just, in the terms wherein he expresses it. But there seems a fallacy in applying the word "poorer" to the Franks, or any barbarian conquerors of Gaul. They were poorer before their conquest; they were richer afterwards. At the battle of Hastings the balance of wealth was, I doubt not, on the side of Harold more than of William; but twenty years afterwards Domesday Book tells us a very different story. If an allotment was made among the Franks, or if they served themselves to land without any allotment, on either hypothesis they became the great proprietors of northern France: and on whom else did the beneficiary donations, the rewards of faithful Antrustiones, generally devolve? It is perfectly consistent with the national superiority of the Franks in the sixth and seventh centuries that in the last age of the Carlovingian line, when the distinction of laws had been abolished or disused, the more numerous people should in many provinces have (not, as Sir Francis Palgrave calls it, subjugated it) absorbed the other. We find this to have been the case at the close of the Anglo-Norman period at home.

One essential difference is generally supposed to have separated the Frank from the Roman. The latter was subject to personal and territorial taxation. Such had been his condition under the empire; and whether the burden might or not be equal in degree (probably it was not such), it is not at all reasonable to believe without proof that he was ever exempted from it. It is, however, true that some French writers have assumed all territorial impositions on free landholders to have ceased after the conquest. (Récits des Temps Méroving. i. 268.)[g] This controversy I do not absolutely undertake to determine; but the proof evidently lies on those who assert the Roman to have been more favored than he was under the empire; when all were liable to the land-tax, though only those destitute of freehold possessions paid the capitation or *census*. We cannot infer such a distinction on the ground

[g] M. Lehuerou imputes the same theory to Montesquieu. But his words (Espr. des Loix, xxx. 13) do not assert that the Romans might not be subject to taxation in the earlier Merovingian period; though afterwards, as he supposes, this obligation was replaced by that of military service.

of tenure from a passage of Gregory (lib. ix. c. 30):—Childebertus verò rex descriptores in Pictavos, invitante Marovio episcopo, jussit, abire; id est, Florentianum majorem domûs regiæ, et Romulfum palatii sui comitem, ut scilicet populus censum quem tempore patris functi fuerant, facta ratione innovaturæ, reddere deberet. Multi enim ex his defuncti fuerant, et ob hoc viduis orphanisque ac debilibus tributi pondus inciderat. Quod hi discutientes per ordinem, relaxantes pauperes ac infirmos, illos quos justitiæ conditio tributarios dabat, censu publico subsiderunt." These collectors were repelled by the citizens of Tours, who proved that Clotaire I. had released their city from any public tribute, out of respect for St. Martin. And the reigning king acquiesced in this immunity. It may also be inferred from another passage (lib. x. c. 7) that even ecclesiastical property was not exempt from taxation, unless by special privilege, which indeed seems to be implied in the many charters conceding this immunity, and in the forms of Marculfus.[h]

It seems, however, clear that the Frank landholder, the *Francus ingenuus*, born to his share, according to old notions, of national sovereignty, gave indeed his voluntary donation annually to the king, but reckoned himself entirely free from compulsory tribute. We read of no tax imposed by the assemblies of the Field of March; and if the kings had possessed the prerogative of levying money at will, the monarchy must have become wholly absolute without opposition. The barbarian was distinguished by his abhorrence of tribute. Tyranny might strip one man of his possessions, banish another from his country, destroy the life of a third; the rest would at the utmost murmur in silence; but a general imposition on them as a people was a yoke under which they would not pass without resistance. I shall mention a few instances in a future note. The Roman, on the other hand, complained doubtless of new or unreasonable taxation; but he could not avoid acknowledging a principle of government to which his forefathers had for so many ages submitted. The house of Clovis stood to him in place of the Cæsars; this part of the theory of Dubos cannot be disputed. But when that writer extends the same to the Frank, as a constitutional position, and not merely referring to acts protested against as illegal, the voice of history refutes him.

Dubos has asserted, and is followed by many, that the army of Clovis was composed of but a few thousand Salian Franks. And for this the testimony of Gregory has been adduced, who informs us only that 3,000 of the army of Clovis (a later writer says 6,000) were baptized with him. (Greg. Tur. lib. ii. c. 33.) But Clovis was not the sole chieftain of his tribe. It has been seen that he enlarged his command towards the close of his life, by violent measures with respect to other kings as independent apparently as himself, and some of whom belonged to his family. Thus the Ripuarian Franks, who occupied the left bank of the Rhine, came under his sway. And besides this, the argument from

h This note was written before I had looked at a work published in 1843, by M. Lehuerou, "Histoire des Institutions Mérovingiennes," in which, with much impartiality and erudition, he draws a line between the theories of Dubos and Montesquieu; and, upon this particular subject of taxation, clearly proves, in my opinion, that the land-tax imposed under the empire continued to be levied on the Roman subjects of Clovis and the next two generations. (Vol. i. p. 271, *et post.*) The Franks, such as were *ingenui*, were originally exempt from this and all other tribute. Of this M. Lehuerou makes no doubt; nor, perhaps, has any one doubted it, except Dubos. But, under the sons and grandsons of Clovis, endeavors were made, to which I have drawn attention in a subsequent note, by those despotic princes, eager to assume the imperial prerogatives over all their subjects, to rob them of their national immunity; and a struggle of the German aristocracy ensued, which annihilated the personal authority of the sovereign. (Hist. des Inst. Mérovingiens, i. 425, *et post.*)

the number of soldiers baptized with Clovis assumes that the whole army embraced Christianity with their king. It is true that Gregory seems to imply this. But even in the seventh century the Franks on the Meuse and Scheldt were still chiefly pagan as the Lives of the Saints are said by Thierry to prove. We have only, it is to be remembered, a declamatory and superficial history for this period, derived, as I believe, from the panegyrical life of St. Remy, and bearing traces of legendary incorrectness and exaggeration. We may, however, appeal to other criteria.

It cannot be too frequently inculcated on the reader who desires to form a general but tolerably exact notion of the state of France under the first line of kings, that he is not hastily to draw inferences from one of the three divisions, Austrasia, Neustria, and Aquitaine, to which, for a part of the period, we must add Burgundy to the rest. The difference of language, though not always decisive, furnishes a presumption of different origin. We may therefore estimate, with some probability, the proportion of Franks settled in the monarchy on the left bank of the Rhine, by the extent of country wherein the Teutonic language is spoken, unless we have reason to suspect that any change in the boundaries of that and the French has since taken place. The Latin was certainly an encroaching language, and its daughter has in some measure partaken of the same character. Many causes are easy to assign why either might have gained ground on two dialects, the German and Flemish, contiguous to it on the eastern frontier, while we can hardly perceive one for an opposite result. We find, nevertheless, that both have very nearly kept their ancient limits. It has been proved by M. Raoux, in the Memoirs of the Academy of Brussels (vol. iv. p. 411), that few towns or villages have changed their language since the ninth century. The French or Walloon followed in that early age the irregular line which, running from Calais and St. Omer to Lisle and Tournay, stretches north of the Meuse as far as Liege, and, bending thence to the southwestward, passes through Longwy to Metz. These towns speak French, and spoke it under Charlemagne, if we can say that under Charlemagne French was spoken anywhere; at least they spoke a dialect of Latin origin. The exceptions are few; but where they exist, it is from the progress of French rather than the contrary. A writer of the sixteenth century says of St. Omer that it was "Olim haud dubie mere Flandricum, deinde tamen bilingue, nunc autem in totum fere Gallicum." There has also been a slight movement toward French in the last fifty years.

The most remarkable evidence for the duration of the limit is the act of partition between Lothaire of Lorraine and Charles the Bald, in 870, whence it appears that the names of places where French is now spoken were then French. Yet most of these had been built, especially the abbeys, subsequently to the Frank conquest: "d'où on peut conclure que même dans le période franque, le langage vulgaire du grand nombre des habitans du pays, qui sont présentement Wallons, n'était pas teutonique; car on en verrait des traces dans les actes historiques et géographiques de ce temps-là." (P. 434.) Nothing, says M. Michelet, can be more French than the Walloon country. (Hist. de France, viii. 287.) He expatiates almost with enthusiasm on the praise of this people, who seem to have retained a large share of his favorite Celtic element. It appears that the result of an investigation into the languages on the Alsatian frontier would be much the same. Here, therefore, we have a very reasonable presumption that the forefathers of the Flemish Belgians, as well as of the people of Alsace, were barbarians: some of the former may be sprung from Saxon colonies planted in Brabant by Charlemagne; but we may derive the majority from Salian and Ripuarian Franks. These were the strength of Austrasia, and among these

the great restorer, or rather founder, of the empire fixed his capital at Aix-la-Chapelle.

In Aquitaine, on the other hand, everything appears Roman, in contradistinction to Frank, except the reigning family. The chief difficulty, therefore, concerns Neustria; that is, from the Scheldt, or, perhaps, the Somme, to the Loire; and to this important kingdom the advocates of the two nations, Roman and Frank, lay claim. M. Thierry has paid much attention to the subject, and come to the conclusion that, in the seventh century, the number of Frank landholders, from the Rhine to the Loire, much exceeded that of the Roman. And this excess he takes to have been increased through the seizure of Church lands in the next age by Charles Martel, who bestowed them on his German troops enlisted beyond the Rhine. The method which Thierry has pursued, in order to ascertain this, is ingenious and presumptively right. He remarked that the names of places will often indicate whether the inhabitants, or more often the chief proprietor, were of Roman or Teutonic origin. Thus Franconville and Romainville, near Paris, are distinguished, in charters of the ninth century, as *Francorum villa* and *Romanorum villa.* This is an instance where the population seems to have been of different race. But commonly the owner's Christian name is followed by a familiar termination. In that same neighborhood proper names of German origin, with the terminations *ville, court, mont, val,* and the like, are very frequent. And this he finds to be generally the case north of the Loire, compared with the left bank of that river. It is, of course, to be understood that this proportion of superior landholders did not extend to the general population. For that, in all Neustrian France, was evidently composed of those who spoke the rustic Roman tongue—the corrupt language which, in the tenth or eleventh century, became worthy of the name of French; and this was the case, as we have just seen, in part of Austrasia, as Champagne and Lorraine.

We may, therefore, conclude that the Franks, even in the reign of Clovis, were rather a numerous people—including, of course, the Ripuarian as well as the Salian tribe. They certainly appear in great strength soon afterwards. If we believe Procopius, the army which Theodebert, king only of Austrasia, led into Italy in 539, amounted to 100,000. And, admitting the probability of great exaggeration, we could not easily reconcile this with a very low estimate of Frank numbers. But, to say the truth, I do not rely much on this statement. It is, at all events, to be remembered that the dominions of Theodebert, on each side of the Rhine, would furnish barbarian soldiers more easily than those of the western kingdoms. Some may conjecture that the army was partly composed of Romans; yet it is doubtful whether they served among the Franks at so early a period, though we find them some years afterwards under Chilperic, a Neustrian sovereign. The armies of Aquitaine, it is said, were almost wholly composed of Romans or Goths; it could not have been otherwise.

The history of Gregory, which terminates in 598, affords numerous instances of Romans in the highest offices, not merely of trust, but of power. Such were Celsus, Amatus, Mummolus, and afterwards Protadius in Burgundy, and Desiderius in Aquitaine. But in these two parts of the monarchy we might anticipate a greater influence of the native population. In Neustria and Austrasia, a Roman count, or mayor of the palace, might have been unfavorably beheld. Yet in the latter kingdom, all Frank as it was in its general character, we find, even before the middle of the sixth century, Lupus, Duke of Champagne, a man of considerable weight, and a Roman by birth; and it was the policy afterwards of Brunehaut to employ Romans. But this not only excited the hostility of the Austrasian Franks, but of the

Burgundians themselves; nor did anything more tend to the ruin of that ambitious woman. Despotism, through its most ready instruments, was her aim; and, when she signally failed in the attempt, the star of Germany prevailed. From that time, Austrasia at least, if not Neustria, became a Frank aristocracy. We hear little more of Romans, ecclesiastics excepted, in considerable power.

If, indeed, we could agree with Montesquieu and Mably, that a Roman subject might change his law and live by the Salic code at his discretion, his equality with the Franks would have been virtually recognized; since every one might place himself in the condition of the more favored nation. And hence Mably accounts for the prevalence of the Frank jurisprudence in the north of France, since it was more advantageous to adopt it as a personal law. The Roman might become an allodial landholder, a member of the sovereign legislature in the Field of March. His *weregild* would be raised, and with that his relative situation in the commonwealth; his lands would be exempt from taxation. But this theory has been latterly rejected. We cannot, indeed, conceive one less consonant to the principles of the barbarian kingdoms, or the general language of the laws. Montesquieu was deceived by the passage in an early capitulary, of which the best manuscripts furnish a different reading. Mably was pleased with an hypothesis which rendered the basis of the state more democratical. But the first who propagated this error, and on more plausible grounds than Montesquieu, though he (Esprit des Loix, liv. xxviii. c. 4) seems to claim it as a discovery of his own, were Du Cange and Muratori. They were misled by an edict of the emperor Lothaire I. in 824:— "Volumus ut cunctus populus Romanus interrogetur quali lege vult vivere, ut tali, quali professi fuerint vivere velle, vivant." But Savigny has proved that this was a peculiar exception of favor granted at that time to the Romans, or rather separately to each person; and that not as a privilege of the ancient population, but for the sake of the barbarians who had settled at Rome. Raynouard is one of those who have been deceived by the more obvious meaning of this law, and adopts the notion of Mably on its authority. Were it even to bear such an interpretation, we could not draw a general inference from it. In the case of married women, or of the clergy, the liberty of changing the law of birth was really permitted. (See Savigny, i. 134, *et post*, Engl. transl.)

It should, however, be mentioned, that a late very learned writer, Troja, admits the hypothesis of a change of law in France, not as a right in every Roman's power, but as a special privilege sometimes conceded by the king. And we may think this conjecture not unworthy of regard, since it serves to account for what is rather anomalous—the admission of mere Romans, at an early period, to the great offices of the monarchy, and especially to that of count, which involved the rank of presiding in the Frank *mallus*. It is said that Romans sometimes assumed German names, though the contrary never happened; and this in itself seems to indicate a change, as far as was possible, of national connection. But it is of little service to the hypothesis of Montesquieu and Mably. Of the edict of Lothaire Troja thinks like Savigny; but he adopts the reading of the capitulary, as quoted by Montesquieu, "Francum, aut barbarum, *aut* hominem qui lege Salicâ vivit;" where the best manuscripts omit the second *aut*.

Note V.

This subject has been fully treated in the celebrated work by Savigny, History of Roman Law in the Middle Ages. The diligence and fidelity of this eminent writer have been acknowledged on all sides; nor has any one been so copious in collecting materials for the history of mediæval jurisprudence, or so perspicuous in arranging them. In a few points later inquirers have not always concurred with him. But, with the highest respect for Savigny, we may say, that of the two leading propositions—namely, first, the continuance of the Theodosian code, copied into the Breviarium Aniani, as the personal law of the Roman inhabitants, both of France and Italy, for several centuries after the subjugation of those countries by the barbarians; and, secondly, the quotation of the Pandects and other parts of the law of Justinian by some few writers, before the pretended discovery of a manuscript at Amalfi—the former has been perfectly well known, at least ever since the publication of the glossary of Du Cange in the seventeenth century, and that of Muratori's Dissertations on Italian Antiquities in the next; nor, indeed, could it possibly have been overlooked by any one who had read the barbarian codes, full as they are of reference to those who followed the laws of Rome; while the second is also proved, though not so abundantly, by several writers of the last age. Guizot, praising Savigny for his truthfulness, and for having shown the permanence of Roman jurisprudence in Europe, well asks how it could ever have been doubted. (Civil. en France, Leçon 11.)

A late writer, indeed, has maintained that the Romans did not preserve their law under the Lombards; elaborately repelling the proofs to the contrary, alleged by Muratori and Savigny. (See Troja, Discorso della Condizione dei Romani vinti dai Longobardi, subjoined to the fourth volume of his Storia d' Italia.) He does not admit that the inhabitants were treated by the Lombard conquerors as anything better than tributaries or *coloni*. Even the bishops and clergy were judged according to the Lombard law (vol. v. p. 86). The personal law did not come in till the conquest of Charlemagne, who established it in Italy. And though later, according to this writer, in its origin, the distinctions introduced by it subsisted much longer than they did in France. Instances of persons professing to live by the Lombard law are found very late in the middle ages; the last is at Bergamo, in 1388. But Bergamo was a city in which the Lombard population had predominated. (Savigny, vol. i. p. 378.)

Whatever may have been the case in Lombardy, the existence of personal law in France is beyond question. It is far more difficult to fix a date for its termination. These national distinctions were indelibly preserved in the south of France by a law of Valentinian III., copied into the Breviarium Aniani, which prohibited the intermarriage of Romans with barbarians. This was abolished so far as to legalize such unions, with the permission of the court, by a law of the Visigoths in Spain, between 653 and 672. But such an enactment could not have been obligatory in France. Whether the Franks ever took Roman wives I cannot say; we have, as far as I am aware, no instance of it in their royal family. Proofs might, perhaps, be found, with respect to private families, in the Lives of the Saints; or, if none, presumptions to the contrary. Troja (Storia d'Italia, p. 1204) says that St. Medard was the offspring of a marriage between a Frank and a Roman mother, before the conquest by Clovis, and that the father lived in the Vermandois. Savigny observes that the prohibition could only have existed among the Visigoths; else a woman could not have changed her law

by marriage. This, however, seems rather applicable to Italy than to the north of France, where we have no proof of such a regulation. Raynouard, whose constant endeavor is to elevate the Roman population, assumes that they would have disdained intermarriage with barbarians. (Hist. du Droit Municipal, i. 288.) But the only instance which he adduces, strangely enough, is that of a Goth with a Frank; which, we are informed, was reckoned to disparage the former. It is very likely, nevertheless, that a Frank Antrustion would not have held himself highly honored by an alliance with either a Goth or a Roman. Each nation had its own pride; the conqueror in arms and dominion, the conquered in polished manners and ancient renown.

"At the beginning of the ninth century," says M. Guizot, "the essential characteristic is that laws are personal and not territorial. At the beginning of the eleventh the reverse prevails, except in a very few instances." (Leçon 25.) But can we approximate no nearer? The territorial element, to use that favorite word, seems to show itself in an expression of the edict of Pistes, 864:—"In iis regionibus quæ legem Romanam sequuntur." (Capit. Car. Calvi.) This must be taken to mean the south of France, where the number of persons who followed any other law may have been inconsiderable, relatively to the rest, so that the name of the district is used collectively for the inhabitants. (Savigny, i. 162.) And this became the *pays du droit écrit*, bounded, at least in a loose sense, by the Loire, wherein the Roman was the common law down to the French revolution; the laws of Justinian, in the progress of learning, having naturally taken place of the Theodosian. But in the same capitulary we read,—"De illis qui secundum legem Romanam vivunt, nihil aliud nisi quod in iisdem continetur legibus, definimus." And the king (Charles the Bald) emphatically declares that neither that nor any other capitulary which he or his predecessors had made is designed for those who obeyed the Roman law. The fact may be open to some limitation; but we have here an express recognition of the continuance of the separate races. It seems highly probable that the interference of the bishops, still in a great measure of Roman birth, and, even where otherwise, disposed to favor Roman policy, contributed to protect the ancient inhabitants from a legislature wherein they were not represented. And this strongly corroborates the probability that the Romans had never partaken of the legislative power in the national assemblies.

In the middle of the tenth century, however, according to Sismondi, the distinction of races was lost; none were Goths, or Romans, or even Franks, but Aquitanians, Burgundians, Flemings. French had become the language of the nation (iii. 400). French must here be understood to include Provençal, and to be used in opposition to German. In this sense the assertion seems to be nearly true; and it may naturally have been the consequence that all difference of personal laws had come to an end. The feudal customs, the local usages of counties and fiefs, took as much the lead in northern France as the Roman code still preserved in the south. The *pays coûtumiers* separated themselves by territorial distinctions from the *pays du droit*.[a] Still the instance quoted

a A work which I had not seen when this note was written, Histoire du Droit Français, by M. Laferrière (p. 85), treats at some length the origin of the customary law of France. It was not, in any considerable degree, borrowed from the barbaric codes, nor greatly, as he thinks, from the Roman law. He points out the manifold discrepancies from the former of these. But these codes appear to have been in force under Charlemagne. The feudal customs, which became the sole law on the right bank of the Loire, he refers to the ninth and two following centuries. And I suppose there can be no doubt of this. The spirit of the French customs, both territorial and personal, was wholly feudal; the Salic code had been compiled on a different motive or leading principle. This is very much what took place in England,

in my note, p. 134, from Vaissette (where, at Carcassonne, so late as 918, we find Roman, Goth, and Frank judges enumerated), is a striking evidence that, even far to the south, the territorial principle had not yet wholly subverted those privileges of races, to which the barbarians, and also the Romans, clung as honorably distinctive.

It is only by the force of very natural prejudices, acting on both the polished and the uncivilized, that we can account for the long continuance of this inconvenient separation. If the Franks scorned the complex and wordy jurisprudence of Rome, it was just as intolerable for a Roman to endure the rude usages of a German tribe. The traditional glory of Rome, transferred by the adoption of that name to the provincials, consoled them in their subjection; and in the continuance of their law, in the knowledge that it was the guarantee of their civil rights against a litigious barbarian, though it might afford them but imperfect security against his violence, in the connection which it strengthened with the Church (for churchmen of all nations followed it), they found no trifling recommendations of this distinction from the conquerors. It seems to be proved that, in lapse of ages, each had gradually borrowed something from the other. The melting down of personal into territorial, that is, uniform law, as it cannot be referred to any positive enactment or to any distinct period, seems to have been the result of such a process. The same judges, the counts and *missi*, appear to have decided the controversies of all the subject nations, whether among themselves or one with another. Marculfus tells us this in positive terms: "Eos recto tramite secundum legem et consuetudinem eorum regas." (Marculf. Formulæ, lib. i. c. 8.) Nor do we find any separate judges, except the *defensores* of cities, who were Romans, but had only a limited jurisdiction. It was only as to civil rights, as ought to be remarked, that the distinction of personal law was maintained. The penalties of crime were defined by a law of the state. And the same must of course be understood as to military service.

Note VI.

The German dukes of the Alemanni and Bavarians belonged to once royal families; their hereditary rights may be considered as those of territorial chiefs. Again, in Aquitaine, the Merovingian kings had so little authority that the counts became nearly independent. But we do not find reason, as far as I am aware, to believe any regular succession of a son to his father, in Neustria or Austrasia, under the first dynasty: much less would Charlemagne have permitted it to grow up. It could never have become an established usage, except in a monarchy too weak to maintain any of its prerogatives. Such a monarchy was that of Charles the Bald. I have said that, in the famous capitulary of Kiersi, in 877, the succession of a son to his father appears to be recognized as a known usage. M. Fauriel, on the other hand, denies that this capitulary even confirms it at all. (Hist. de la Gaule Meridionale, iv. 383.) We both, therefore, agree against the current of French writers who take this for the epoch of hereditary succession. It seems evident to me that an usage, sufficient, in common parlance, to entitle the son

and perhaps more rapidly, in the twelfth century; the Norman law, with its feudal principle, replaced the Anglo-Saxon.

But a Belgian writer, M. Raepsaet (Nouveaux Mémoires de l'Académie de Bruxelles, t. iii.), contends that the Salic and Ripuarian laws had authority in the Netherlands, down to the thirteenth century, for towns and for allodial proprietors. We find lex Salica in several instruments: Otho of Frisingen says, "Lege quæ Salica usque ad hæc tempora vocatur, nobilissimos Francorum adhuc uti." But this must have been chiefly as to successions.

to receive the honor which his father had held, is implied in this capitulary. But the object of the enactment was to provide for the contingency of a territorial government becoming vacant by death during the intended absence of the Emperor Charles in Italy; and that in cases only where the son of the deceased count should be with the army, or in his minority, or where no son survived. "It is obvious," Palgrave says, "that the law relates to the custody of the county or fief during the interval between the death of the father and the investiture of the heir." (English Commonwealth, 392.) But the case of an heir, that is, a son—for collateral inheritance is excluded by the terms of the capitulary—being of full age and on the spot, is not specially mentioned; so that we must presume that he would have assumed the government of the county, awaiting the sovereign's confirmation on his return from the Italian expedition. The capitulary should be understood as applicable to temporary circumstances, rather than as a permanent law. But I must think that the lineal succession is taken for granted in it.[a]

We find that so long at least as the kings retained any power, their confirmation or consent was required on every succession to an honor —that is, a county or other government—though it was very rarely refused. Gaudet (Notices sur Richer, p. 62) supposes this to have been the case even in the last reigns of the Caroline family; that is, in the tenth century; but this is doubtful, at least as to the southern dukes and counts. These honors gradually, after the accession of the house of Capet, assumed a new character, and were confounded together with benefices under the general name of fiefs of the crown. The counts, indeed, according to Montesquieu and to probability, held beneficiary lands attached to their office. (Esprit des Loix, xxvi. 27.)

The county, it may here be mentioned, was a territorial division, generally of the same extent as the *pagus* of the Roman empire. The latter appellation is used in the Merovingian period, and long afterwards. The word county, *comitatus*, is said to be rare before 800; but the royal officer was called *comes* from the beginning. The number of *pagi*, or counties, I have not found. The episcopal dioceses were 118 in the Caroline period, and were frequently, but not always, coincident in extent with the civil divisions. (See Guerard. Cartulaire de Chartres, Prolégomènes, p. 6, in Documens Inédits, 1840.)

Note VII.

A reconsideration of the Merovingian history has led me to doubt whether I may not, in my earlier editions, like several others, have rather exaggerated the change in the prerogative of the French kings from Clovis to Clotaire II. Though the famous story of the vase of Soissons is not insignificant, it now seems to me that an excessive stress has sometimes been laid upon it. In the first place, there is a general objection to founding a large political theory on any anecdote, which proving false, the whole would crumble for want of a basis. This, how-

a Si comes obierit, cujus filius nobiscum sit, filius noster cum cæteris fidelibus nostris ordinet de his illi plus familiares et propinquiores fuerint, qui cum ministerialibus ipsius comitatus et episcopo ipsum comitatum prævideat, usque cum nobis renuntietur. Si autem filium parvulum habuerit, iisdem cum ministerialibus ipsius comitatûs et episcopo, in cujus parochia consistit, eundem comitatum prævideat, donec ad nostram notitiam perveniat. Si vero filium non habuerit, filius noster cum cæteris fidelibus nostris ordinet, qui cum ministerialibus ipsius comitatûs et episcopo ipsum comitatum prævideat, donec jussio nostra inde fiat. Et pro hoc nullus irascatur, si eundem comitatum alteri, qui nobis placuerit, dederimus, quam illi qui eam hactenus prævidit. Similiter et de vassallis nostris faciendum est. (Script. Rer. Gall. vii. 701.)

ever, is rather a general remark than intended to throw doubt upon the story told by Gregory of Tours, who, though he came so long afterwards, and though there is every appearance of rhetorical exaggeration and inexactness in the detail, is likely to have learned the principal fact by tradition or some lost authority.[a] But even taking the circumstances exactly according to his relation, do they go much further than to inform us, what our knowledge of barbarian manners might lead any one to presume, that the booty obtained by a victory was divided among the army? Clovis was not refused the vase which he requested; the army gave their assent in terms which Gregory, we may well believe, has made too submissive; he took it without regard to the insolence of a single soldier, and revenged himself on the first opportunity. The Salian king was, I believe from other evidence, a limited one; he was obliged to consult his army in war, his chief men in peace; but the vase of Soissons does not seem to warrant us in deeming him to have been more limited than from history and analogy we should otherwise infer. If, indeed, the language of Gregory were to be trusted, the whole result would tell more in favor of the royal authority than against it. And thus Dubos, who has written on the principle of believing all that he found in history to the very letter, has interpreted the story.

Two French writers, the latter of considerable reputation, Boulainvilliers and Mably, have contributed to render current a notion that the barbarian kings, before the conquest of Gaul, enjoyed scarcely any authority beyond that of leaders of the army. And this theory has lately been maintained by two of our countrymen, whose researches have met with great approbation. "It is plain," says Mr. Allen, "the monarchical theory cannot have been derived from the ancient Germans. In the most considerable of the German tribes the form of government was republican. Some of them had a chief, whom the Romans designated with the appellation of king; but his authority was limited, and in the most distinguished of their tribes the name as well as the office of king was unknown.[b] The supreme authority of the nation resided in the freemen of whom it was composed. From them every determination proceeded which affected the general interests of the community, or decided the life or death of any member of the commonwealth. The territory of the state was divided into districts, and in every district there was a chief who presided in its assemblies, and, with the assistance of the other freemen, regulated its internal concerns, and in matters of inferior importance administered justice to the inhabitants.

This form of government subsisted among the Saxons of the Continent so late as the close of the seventh century, and probably continued in existence till their final conquest by Charlemagne. Long before that period, however, the tribes that quitted their native forests, and established themselves in the empire, had converted the temporary general of their army into a permanent magistrate, with the title of king. But that the person decorated with this appellation was invested with the attributes essential to royalty in after-times is utterly in-

a Since this sentence was written I have found the story of the vase of Soissons in Hincmar's Life of St. Remi, which, as I have observed in a former note, appears to be taken from a document nearly contemporary with the saint, that is, with Clovis. And this original Life of St. Remi, preserved only in extracts when Hincmar compiled his own biography of that famous bishop, is, in all likelihood, the basis of whatever Gregory of Tours has recorded concerning the founder of the monarchy; very rhetorical, and probably not accurate, but essentially deserving belief.

b This is by no means an unquestionable representation of what Tacitus has said; but the language of that historian, as has been observed in a former note, is not sufficiently perspicuous on this subject of German royalty.

credible. Freemen with arms in their hands, accustomed to participate in the exercise of the sovereign power, were not likely without cause to divest themselves of that high prerogative, and transfer it totally and inalienably to their general. Chiefs who had been recently his equals might, in consideration of his military talents, and from regard to their common interest, acquiesce in his permanent superiority as commander of their united forces; but it cannot be supposed that they would gratuitously and universally submit to him as their master. There are no written accounts, it is true, of the conditions stipulated by the German warriors when they converted him into a king. But there is abundance of facts recorded by historians, which show beyond a doubt that, though he might occasionally abuse his power by acts of violence and injustice, the authority he possessed by law was far from being unlimited. (Inquiry into the Rise and Growth of Royal Prerogative, p. 11.)

It may be observed, in the first place, that Mr. Allen appeared to have combated a shadow. Few, I presume, contend for an unlimited authority of the Germanic kings, either before or after their conquests of France and England. A despotic monarchy was utterly uncongenial to the mediæval polity. Sir F. Palgrave follows in the same direction:—

"When the 'three tribes of Germany' first invaded Britain, royalty, in our sense of the term, was unknown to them. Amongst the Teutons in general the word 'king,' probably borrowed from the Celtic tongue, though now naturalized in all the Teutonic languages, was as yet not introduced or invented. Their patriarchal rulers were their 'aldermen,' or seniors. In 'old Saxony' there was such an alderman in every pagus. Predominant or preëminent chieftains, whom the Romans called 'reges,' and who were often confirmed in their dominions by the Romans themselves, existed at an earlier period amongst several of the German tribes; but it must not be supposed that these leaders possessed any of the exalted functions and complex attributes which, according to our ideas, constitute royal dignity. A king must be invested with permanent and paramount authority. For the material points at issue are not affected by showing that one powerful chieftain might receive the complimentary title of *rex* from a foreign power, or that another chieftain, with powers approaching to royalty, may not have been created occasionally, and during greater emergencies. The real question is, whether the king had become the lord of the soil, or at least the greatest landed proprietor, and the first 'estate' of the commonwealth, endued with prerogatives which no other member of the community could claim or exercise. The disposal of the military force, the supreme administration of justice, the right of receiving taxes and tributes, and the character of supreme legislator and perpetual president of the councils of the realm, must all belong to the sovereign, if he is to be king in deed as well as in name." (Rise and Progress of the English Commonwealth, vol. i. p. 553.)

The prerogatives here assigned to royalty as part of its definition are of so various a nature, and so indefinitely expressed, that it is difficult to argue about them. Certainly a "king in deed" must receive taxes, and dispose, though not necessarily without consent, of the military force. He must preside in the councils of the realm; but he need not be supreme legislator, if that is meant to exclude the participation of his subjects; much less need he be the lord of the soil—a very modern notion, and merely technical, if indeed it could be said to be true in any proper sense—nor even the greatest landed proprietor. "A king's a king for a' that;" and we have never in England known any other.

But why do these eminent writers depreciate so confidently the powers of a Frank or Saxon king? Even if Cæsar and Tacitus are to be implicitly confided in for their own times, are we to infer that no con-

solidation of the German clans, if that word is a right one, had been effected in the four succeeding centuries? Are we even to reject the numerous testimonies of Latin writers during those ages, who speak of kings, hereditary chieftains, and leaders of the barbarian armies? If there is a notorious fact, both as to the Salian Franks and the Saxons of Germany, it is that each had an acknowledged royal family. Even if they sometimes chose a king not according to our rules of descent, it was invariably from one ancestor. The house of Meroveus was probably recognized before the existence of that obscure prince; and in England Hengist could boast the blood of Woden, the demigod of heroic tradition. A government by *grafs* or *ealdormen* of the *gau* might suit a people whose forests protected them from invasion, but was utterly incompatible with the aggressive warfare of the Franks, or of the first conquerors of Kent and Wessex. Grimm, in his excellent Antiquities of German Law, has fully treated of the old Teutonic monarchies, not always hereditary, and never absolute, but easily capable of receiving an enlargement of power in the hands of brave and ambitious princes, such as arose in the great westward movement of Germany.

If, however, the authority of Clovis has been rated too low, it may also be questioned whether that of the next two generations, his sons and grandsons, has not been exaggerated in contrast. It is certainly true that Gregory of Tours exhibits a picture of savage tyranny in several of these sovereigns. But we are to remember that particular acts of arbitrary power, and especially the putting obnoxious persons to death, were so congenial to the whole manners of the age, that they do not prove the question at issue, whether the government may be called virtually an absolute monarchy. Every Frank of wealth and courage was a despot within his sphere; but his sphere of power was a bounded one; and so, too, might be that of the king. Probably when Gontran or Fredegonde ordered a turbulent chief to be assassinated, no *weregild* was paid to his kindred; but his death would excite hardly any disapprobation, except among those who thought it undeserved.

Gregory of Tours, it should be kept in mind, was a Roman; he does not always distinguish the two nations; but a great part of the general oppression which we find under the grandchildren of Clovis seems to have fallen on the subject people. As to these, few are inclined to doubt that the king was truly absolute. The most remarkable instances of arbitrary power exerted upon the Franks are in the imposition of taxes. These, as has been said in another note, were repugnant to the whole genius of barbarian society. We find, however, that on the death of Theodebert, king of Austrasia, in 547, the Franks murdered one Parthenius, evidently a Roman, and a minister of the late king—"pro eo quod iis tributa antedicti regis tempore inflixesset." (Greg. Tur. lib. iii. c. 36.) Whether these tributes continued afterwards to be paid we do not read. Chilperic, the most oppressive of his line, at a later period, in 579, laid a tax on freehold lands—"ut possessor de terra propria amphoram vini per aripennem redderet." (Id. lib. v. c. 29.) It is, indeed, possible that this affected only the Romans, though the language of the historian is general—"descriptiones novas et graves in omni regnosuo fieri jussit." A revolt broke out in consequence at Limoges; but the inhabitants of that city were Roman. Chilperic put this down by the help of his faithful Antrustions—"unde multum molestus rex, dirigens de latere suo personas, immensis damnis populum afflixit, suppliciisque conterruit." Mr. Spence (Laws of Modern Europe, p. 269) is clearly of opinion, against Montesquieu, who confines this tax to the Romans, that it comprehended the Franks also, and was in the nature of the indiction, or land-tax, imposed on the subjects of the Roman empire by an assessment renewed every fifteen years; and this, per-

haps, on the whole, is the more probable hypothesis of the two. Mr. S. says (p. 267) that lands subject to tribute still continued liable when in the possession of a Frank. This is possible, but he refers to texts which do not prove it.

The next passage which I shall quote is more unequivocal. The death of Chilperic exposed his instruments of tyranny, as it had Parthenius in Austrasia, to the vengeance of an oppressed people. Fredegonde, though she escaped condign punishment herself, could not screen these vile ministers:—" Habebat tunc temporis secum Audonem judicem, qui ei tempore regis in multis consenserat malis. Ipse enim cum Mummolo præfecto multos de Francis, qui tempore Childeberti regis senioris ingenui fuerant, publico tributo subegit. Qui, post mortem regis Chilperici, ab ipsis spoilatus ac denudatus est, ut nihil ei, præter quod super se auferre potuit, remaneret. Domos enim ejus incendio subdiderunt; abstulissent utique et ipsam vitam, ni cum regina ecclesiam expetisset." (Lib. vii. c. 15.) The word *ingenui*, in the above passage, means the superior class—allodial landholders or beneficiaries, as distinguished from the class named *lidi*, who are also perhaps sometimes called *tributarii*, as well as the Romans, and from whom a public *census*, as some think, was due. We may remark here, that the removing of a number of Franks from their own place as *ingenui*, to that of tributaries, was a particular act of oppression, and does not stand quite on the footing of a general law. The passage in Gregory is chiefly important as it shows that the *ingenui* were not legally subject to public tribute.

M. Guizot has adduced a constitution of Clotaire II. in 615, as a proof that endeavors had been made by the kings to impose undue taxes. This contains the following article: " Ut ubicunque census novus impie additus est, et a populo reclamatur, justa inquisitione misericorditer emendetur." (C. 8.) But does this warrant the inference that any tax had been imposed on the free-born Frank? " *Census* " is generally understood to be the capitation paid by the *tributarii*, and the words imply a local exaction rather than a national imposition by the royal authority. It is not even manifest that this provision was founded exclusively on any oppression of the crown; several other articles in this celebrated law are extensively remedial, and forbid all undue spoliation of the weak. But if we should incline to Guizot's interpretation, it will not prove, of course, the right of the kings to impose taxes on the Franks, since that to which it adverts is called *census novus impie additus*.

The inference which I formerly drew from the language of the laws is inconclusive. Bouquet, in the Recueil des Historiens (vol. iv.), admits only seven laws during the Merovingian period, differing from Baluze as to the particular sovereigns by whom several of them were enacted. Of these the first is by Childebert I., king of Paris, in 532, according to him; by Childebert II. of Austrasia according to Baluze, which, as the date is Cologne, and several Austrasian cities are mentioned in it which never belonged to the first Childebert, I cannot but think more likely. This constitution has *unà cum nostris optimatibus*, and *convenit unà leudis nostris*. And the expressions lead to two inferences; first, that the assembly of the Field of March was, in that age, annually held; secondly, that it was customary to send round to the people the determinations of the optimates in this council:—" Cum nos omnes calendas Martias de quascunque conditiones unà cum optimatibus nostris pertractavimus, ad unumquemque notitiam volumus pervenire." The grammar is wretched, but such is the evident sense.

The second law, as it is called, is an agreement between Childebert and Clotaire; the first of each name according to Bouquet, the second according to Baluze. This wants all enacting words except " Decretum

est." The third is an ordinance of Childebert for abolishing idolatrous rites and keeping festivals. It is an enforcement of ecclesiastical regulations, not perhaps reckoned at that time to require legislative sanction. The fourth, of Clotaire I. or Clotaire II., begins "Decretum est," and has no other word of enactment. But this does not exclude the probability of consent by the leudes. Clotaire I., in another constitution, speaks authoritatively. But it will be found, on reading it, that none except his Roman subjects are concerned. The sixth is merely a precept of Gontran, directed to the bishops and judges, enjoining them to maintain the observance of the Lord's day and other feasts. The last is the edict of Clotaire II. in 615, already quoted, and here we read,— "Hanc deliberationem quam cum pontificibus vel tam magnis viris optimatibus, aut fidelibus nostris in synodali concilio institutimus."

After 615 no law is extant enacted in any of the Frank kingdoms before the reign of Pepin. This, however, cannot of itself warrant the assertion that none were enacted which do not remain. It is more surprising, perhaps, that even a few have been preserved. The language of Childebert above cited leads to the belief that, in the sixth century, whatever we may suppose as to the next, an assembly with powers of legislation was regularly held by the Frank sovereigns. Nothing, on the whole, warrants the supposition that the three generations after Clovis possessed an acknowledged right, either of legislating for their Frank subjects or imposing taxes upon them. But after the assassination of Sigebert, under the walls of Tournay, in 575, the Austrasian nobles began to display a steady resistance to the authority which his widow Brunehaut endeavored to exercise in her son's name. This, after forty years, terminated in her death, and in the reunion of the Frank monarchy, with a much more aristocratic character than before, under the second Clotaire. It is a revolution to which we have already drawn attention in the note on Brunehaut.

Note VIII.

"The existence," says Savigny, "of an original nobility, as a particular patrician order, and not as a class indefinitely distinguished by their wealth and nobility, cannot be questioned. It is difficult to say from what origin distinction may have proceeded; whether it was connected with the services of religion, or with the possession of the heritable offices of counts. We may affirm, however, with certainty, that the honor enjoyed was merely personal, and conferred no preponderance in the political or judicial systems." (Ch. iv. p. 172, English translation.) This admits all the theory to which I have inclined in the text, namely, the non-existence of a privileged order, though antiquity of family was in high respect. The *eorl* of Anglo-Saxon law was, it may be said, distinguished by certain privileges from the *ceorl*. Why could not the same have been the case with the Franks? We may answer that it is by the laws and records of those times that we prove the former distinction in England, and it is by the absence of all such proof that the non-existence of such a distinction in France has been presumed. But if the *lidi*, of whom we so often read, were Franks by origin, and moreover personally free, which, to a certain extent, we need not deny, they will be the corresponding rank to the Anglo-Saxon *ceorl*, superior, as, from whatever circumstances, the latter may have been in his social degree. All the *Franci ingenui* will thus have constituted a class of nobility; in no other sense, however, than all men of white race constitute such a class in those of the United States where slavery is abolished, which is not what we usually mean by the word. In some German

nations we have, indeed, a distinct nobility of blood. The Bavarians had five families, for the death of a member of whom a double composition was paid. They had one, the Agilolfungi, whose composition was fourfold. Troja also finds proof of two classes among the Alemanns (v. 168). But we are speaking only of the Franks, a cognate people, indeed, to the Saxons and Alemanns, but not the same, and whose origin is not that of a pure single tribe. The Franks were collectively like a new people in comparison with some others of Teutonic blood. It does not, therefore, appear to me so unquestionable as to Savigny that a considerable number of families formed a patrician order in the French monarchy, without reference to hereditary possessions or hereditary office.

A writer of considerable learning and ingenuity, but not always attentive to the strict meaning of what he quotes, has found a proof of family precedence among the Franks in the words *crinosus* and *crinitus*, employed in the Salic law and in an edict of Childebert. (Meyer, Institut. Judiciaires, vol. i. p. 104.) This privilege of wearing long hair he supposes peculiar to certain families, and observes that *crinosus* is opposed to *tonsoratus*. But why should we not believe that all superior freemen, that is, all Franks, whose composition was of two hundred solidi, wore this long hair, though it might be an honor denied to the *lidi?* Gibert, in a memoir on the Merovingians (Acad. des Inscript. xxx. 538), quotes a passage of Tacitus, concerning the manner in which the nation of the Suevi wore their hair, from whom the Franks are supposed by him to be descended. And there is at least something remarkable in the language of Tacitus, which indicates a distinction between the royal family and other freemen, as well as between these and the servile class. The words have not been, I think, often quoted:— "Nunc de Suevis dicendum est, quorum non una ut Cattorum Tencterorumque gens; majorem enim Germaniæ partem obtinent, propriis adhuc nationibus discreti quamquam in communi Suevi dicuntur. Insigne gentis obliquare crinem, nodoque substringere. Sic Suevi a cæteris Germanis, sic Suevorum ingenui a servis separantur. In aliis gentibus seu cognatione aliqua Suevorum, seu, quod accidit, imitatione, rarum et intra juventæ spatium, apud Suevos usque ad canitiem, horentum capillum retro sequuntur ac saepe in ipso solo vertice religant; *principes et ornatiorem habent.*" (De Mor. German. c. 38.) This last expression may account for the word *crinitus* being sometimes applied to the royal family, as it were exclusively, sometimes to the Frank nation or its freemen.[a] The references of M. Meyer are so far from sustaining his theory that they rather lead me to an opposite conclusion.

M. Naudet (in Mémoires de l'Académie des Inscriptions, Nouvelle Série, vol. viii. p. 502) enters upon an elaborate discussion of the state of persons under the first dynasty. He distinguishes, of course, the *ingenui* from the *lidi*. But among the former he conceives that there were two classes: the former, absolutely free as to their persons, valued in their *weregild* at 200 solidi, meeting in the county *mallus*, and sometimes in the national assembly,—in a word, the *populus* of the Frank monarchy; the latter, valued, as he supposes, at 100 solidi, living under the protection or *mundeburde* of some rich man, and though still free, and said to be *ingenuili ordine servientes*, not very distinguishable at present from the *lidi*. I do not know that this theory has been countenanced by other writers. But even if we admit it, the higher class could

a The royal family seems also to have worn longer hair than the others. Childebert proposed to Clotaire, as we read in Gregory of Tours (iii. 18), that the children of their brother Clodimer should be either cropped or put to death: "quid de his fieri debeat; et utrum incisa cæsarie, ut reliqua plebs habeantur, an certè his interfectis regnum germani nostri inter nosmetipsos æqualitate habita dividatur."

not properly be denominated an hereditary nobility; their privileges would be those of better fortune, which had rescued them from the dependence into which, from one cause or another, their fellow-citizens had fallen. The Franks in general are called by Guizot *une noblesse en décadence;* the *leudes* one *en progrès.* But he maintains that from the fifth to the eleventh age there existed no real nobility of birth. In this, however, he goes much further than Mably, who does not scruple to admit an hereditary nobility in the time of Charlemagne, and probably further than can be reasonably allowed, especially if the eleventh century is to be understood inclusively. In that century we shall see that the nobles formed a distinct order; and I am much inclined to believe that this was the case as soon as feudal tenure became general, which was at least as early as the tenth.

M. Lehuerou denies any *hereditary* nobility during the Merovingian period, at least, of French history: "Il n'existait donc point de noblesse dans le sens moderne du mot, puisqu'il n'y avait point d'hérédité, et puisque l'hérédité, si elle se produisait quelquefois, était purement accidentelle; mais il y avait une aristocratie mobile, changeante, variable au gré des accidents et des caprices de la vie barbare, et néanmoins en possession de véritables priviléges qu'il faut se garder de méconnaître. Cette aristocratie était plutôt celle des titres, des places, et des honneurs, que celle de la naissance, quoique celle-ci n'y fût pas étrangère. Elle était plus dans le présent, et moins dans le passé; elle empruntait plus à la puissance actuelle qu'à celle des souvenirs; mais elle ne s'en détachait pas moins nettement des couches inférieures de la population, et notamment de la foule de ceux dont la noblesse ne consistait que dans leur ingenuité." (Inst. Caroling. p. 452.)

Note IX.

The nature of benefices has been very well discussed, like everything else, by M. Guizot, in his Essai sur l'Hist. de France, p. 120. He agrees with me in the two main positions—that benefices, considered generally, never passed through the supposed stage of grants revocable at pleasure, and that they were sometimes granted in inheritance from the sixth century downwards. This, however, was rather the exception, he supposes, than the rule. "We cannot doubt that under Charlemagne, most benefices were granted only for life" (p. 140). Louis the Debonair endeavored to act on the same policy, but his efforts were unsuccessful. Hereditary grants became the rule, as is proved by many charters of his own and Charles the Bald. Finally, he tells us, the latter prince, in 877, empowered his *fideles* to dispose of their benefices as they thought fit, provided it were to persons capable of serving the estate. But this is too largely expressed; the power given is to those vassals who might desire to take up their abode in a cloister; and it could only be exercised in favor of a son or other kinsman.[a] But the right of inheritance had probably been established before. Still, so deeply was the notion of a personal relation to the grantor implanted in the minds of men, that it was common, notwithstanding the largest terms of inheritance in a grant, for the new tenant to obtain a confirmation from the crown. This might also be for the sake of security. And is precisely the renewal of homage and fealty on a change of tenancy, which belonged to the more matured stage of the feudal polity.

a Si aliquis ex fidelibus nostris post obitum nostrum, Dei et nostro amore compunctus, sæculo renuntiare voluerit, et filium vel talem propinquum habuerit qui reipublicæ prodesse valeat, suos honores prout melius voluerit ei valeat piscitare.—Script. Rer. Gall. vii. 701.

Mr. Allen observes, with respect to the formula of Marculfus quoted in my note, p. 130:—"Some authors have considered this as a precedent for the grant of an hereditary benefice. But it is only necessary to read with attention the act itself to perceive that what it creates is not an hereditary benefice, but an allodial estate. It is viewed in this light in his (Bignon's) notes on a subsequent formula (sect. 17), confirmatory of what had been done under the preceding one, and it is only from inadvertence that it could have been considered in a different point of view." (Inquiry into Royal Prerogative, Appendix, p. 47.) But Bignon took for granted that benefices were only for term of life, and consequently that words of inheritance, in the age of Marculfus, implied an allodial grant. The question is, What constituted a benefice? Was it not a grant by favor of the king or other lord? If the words used in the formula of Marculfus are inconsistent with a beneficiary property, we must give up the inference from the treaty of Andely, and from all other phrases which have seemed to convey hereditary benefices. It is true that the formula in Marculfus gives a larger power of alienation than belonged afterwards to fiefs; but did it put an end to the peculiar obligation of the holder of the benefice towards the crown? It does not appear to me unreasonable to suppose an estate so conferred to have been strictly a benefice, according to the notions of the seventh century.

Subinfeudation could hardly exist to any considerable degree until benefices became hereditary. But as soon as that change took place, the principle was very natural and sure to suggest itself. It prodigiously strengthened the aristocracy, of which they could not but be aware; and they had acquired such extensive possessions out of the royal domain that they could well afford to take a rent for them in iron instead of silver. Charlemagne, as Guizot justly conceives, strove to counteract the growing feudal spirit by drawing closer the bonds between the sovereign and the subject. He demanded an oath of allegiance, as William afterwards did in England, from the vassals of mesne lords. But after his death, and after the complete establishment of an hereditary right in the grants of the crown, it was utterly impossible to prevent the general usage of subinfeudation.

Mably distinguishes the lands granted by Charles Martel to his German followers from the benefices of the early kings, reserving to the former the name of fiefs. These he conceives to have been granted only for life, and to have involved, for the first time, the obligation of military service. (Observations sur l'Hist. de France, vol. i. p. 32.) But as they were not styled fiefs so early, but only benefices, this distinction seems likely to deceive the reader; and the oath of fidelity taken by the Antrustion, which, though personal, could not be a weaker obligation after he had acquired a benefice, carries a very strong presumption that military service, at least in defensive wars, not always distinguishable from wars to revenge a wrong, as most are presumed to be, was demanded by the usages and moral sentiments of the society. We have not a great deal of testimony as to the grants of Charles Martel; but in the capitularies of Charlemagne it is evident that all holders of benefices were bound to follow the sovereign to the field.

M. Guérard (Cartulaire de Chartres, i. 23) is of opinion that, though benefices were ultimately fiefs, in the first stage of the monarchy they were only usufructs; and the word will not be clearly found in the restrained sense during that period. "Cette différence entre deux institutions nées l'une de l'autre, quoique assez délicate, était essentielle. Elle ne pourrait être méconnue que par ceux qui considéréraient seulement, les bénefices à la fin, et les fiefs au commencement de leur existence; alors en effet les uns et les autres se confondaient." That they were not mere usufructs, even at first, appears to me more probable.

Note X.

Somner says that he has not found the word feudum anterior to the year 1000; and that Muratori, a still greater authority, doubts whether it was used so early. I have, however, observed the words feum and fevum, which are manifestly corruptions of feudum, in several charters about 960. (Vaissette, Hist. de Languedoc, t. ii. Appendix, p. 107, 128, et alibi.) Some of these fiefs appears not to have been hereditary. But independently of positive instances, can it be doubted that some word of barbarous original must have answered, in the vernacular languages, to the Latin beneficium? See Du Cange, v. Feudum. Sir F. Palgrave answers this by producing the word *lehn*. (English Commonwealth, ii. 208.) And though M. Thierry asserts (Récits des Temps Mérovingiens, i. 245) that this is modern German, he seems to be altogether mistaken. (Palgrave, ibid.) But when Sir F. Palgrave proceeds to say—"The essential and fundamental principle of a territorial fief or feud is, that the land is held by a limited or conditional estate—the property being in the lord, and the usufruct in the tenant," we must think this not a very exact definition of feuds in their mature state, however it might apply to the early benefices for life. The property, by feudal law, was, I conceive, strictly in the tenant; what else do we mean by fee-simple? Military service in most cases, and always fealty, were due to the lord, and an abandonment of the latter might cause forfeiture of the land; but the tenant was not less the owner, and might destroy it or render it unprofitable if he pleased.

Feudum Sir F. Palgrave boldly derives from *emphyteusis;* and, in fact, by processes familiar to etymologists, that is, cutting off the head and legs, and extracting the back-bone, it may thence be exhibited in the old form, *feum*, or *fevum*. M. Thierry, however, thinks *feh*, that is, fee or pay, and *odh*, property, to be the true root. (Lettres sur l'Hist. de France, Lettre x.) Guizot inclines to the same derivation; and it is, in fact, given by Du Cange and others. The derivation of *alod* from *all* and *odh* seems to be analogous; and the word *udaller*, for the freeholder of the Shetland and Orkney Isles, strongly confirms this derivation, being only the two radical elements reversed, as I remember to have seen observed in Gilbert Stuart's View of Society. A charter of Charles the Fat is suspected on account of the word feudum, which is at least of very rare occurrence till late in the tenth century. The great objection to *emphyteusis* is, that a fief is a different thing. Sir F. Palgrave, indeed, contends that an "emphyteusis" is often called a "precaria," and that the word "precaria" was a synonym of "beneficium," as beneficium was of "feudum." But does it appear from the ancient use of the words "precaria" and "beneficium" that they were convertible, as the former is said, by Muratori and Lehuerou, to have been with emphyteusis? (Murat. Antiq. Ital. Diss. xxxvi. Lehuerou, Inst. Caroling. p. 183.) The tenant by *emphyteusis*, whom we find in the Codes of Theodosius and Justinian, was little more than a *colonus*, a demi-serf attached to the soil, though incapable of being dispossessed. Is this like the holder of a benefice, the progenitor of the great feudal aristocracy? How can we compare emphyteusis with beneficium without remembering that one was commonly a grant for a fixed return in value, answering to the "terræ censuales" of later times, and the latter, as the word implies, a free donation with no condition but gratitude and fidelity? The word *precaria* is for the most part applied to ecclesiastical property which, by some usurpation, had fallen into the hands of laymen. These afterwards, by way of compromise, were permitted to continue as tenants of the church for a limited term, generally of life, on payment of a fixed rate. Marculfus, however, gives a form in

which the grantor of the precaria appears to be a layman. Military service was not contemplated in the emphyteusis or the precaria, nor was either of them a perpetuity; at least this was not their common condition. Meyer derives feudum from *fides*, quoting Aimoin: "Leudibussuis in *fide* disposuit." (Inst. Judic. i. 187.)

Note XI.

M. Guizot, with the highest probability, refers the conversion of allodial into feudal lands to the principle of commendation. (Essais sur l'Hist. de France, p. 166.) Though originally this had no relation to land, but created a merely personal tie—fidelity in return for protection—it is easy to conceive that the allodialist who obtained this privilege, as it might justly appear in an age of rapine, must often do so by subjecting himself to the law of tenure—a law less burdensome at a time when warfare, if not always defensive, as it was against the Normans, was always carried on in the neighborhood, at little expense beyond the ravages that might attend its want of success. Raynouard has published a curious passage from the Life of St. Gerald, a Count of Aurillac, where he is said to have refused to subject his allodial lands to the Duke of Guienne, with the exception of one farm, peculiarly situated. "Erat enim semotim, inter pessimos vicinos, longe a cæteris disparatum." His other lands were so situated that he was able to defend them. Nothing can better explain the principle which riveted the feudal yoke upon allodialists. (Hist. du Droit Municipal, ii. 261.)

In my text, though M. Guizot has done me the honor to say, "M. Montlosier et M. Hallam en ont mieux démêlé la nature et les causes," the subject is not sufficiently disentangled, and the territorial character which commendation ultimately assumed is too much separated from the personal. The latter preceded even the conquest of Gaul, both among the barbarian invaders themselves and the provincial subjects,[a] and was a sort of *clientela;*[b] but the former deserves also the name of commendation, though the Franks had a word of their own to express it. We find in Marculfus the form by which the king took an ecclesiastical person, with his property and followers, under his own *mundeburde*, or safeguard. (Lib. i. c. 44.) This was equivalent to commendation, or rather another word for it; except as one rather expresses the act of the tenant, the other that of the lord. Letters of safeguard were not by any means confined to the church. They were frequent as long as the crown had any power to protect, and revived again in the decline

a M. Lehuerou has gone very deeply into the *mundium*, or personal safeguard, by which the inferior class among the Germans were commended to a lord, and placed under his protection, in return for their own fidelity and service. (Institutions Carolingiennes, liv. i. ch. i. sec. 2.) It is a subject, as he conceives, of the highest importance in these inquiries, being, in fact, the real origin of the feudal polity afterwards established in Europe; though, from the circumstances of ancient Germany, it was of necessity a personal and not a teritorial vassalage. It fell in very naturally with the similar principle of commendation existing in the Roman empire. This bold and original theory, however, has not been admitted by his contemporary antiquaries. M. Giraud and M. Mignet (Séances et Travaux de l'Académie des Sciences Morales et Politiques, pour Novembre, 1843), especially the latter, dissent from this explication of the origin of feudal polity, which was in no degree of a domestic character. The utmost they can allow is, that territorial jurisdiction was extended to feudal vassals, by analogy to that which the patron, or chief of the *mundium*, had exercised over those who recognized him as protector, as well as over his family and servants. There is nevertheless, perhaps, a larger basis of truth in M. Lehuerou's system than they admit, though I do not conceive it to explain the whole feudal system.

b Garnier has happily adduced a very ancient authority for this use of the word.

Thais patri se commendavit; in clientelam et fidem
Nobis dedit se.—Ter. Eun., Act 5.

Origine du Gouvernement Français (in Leber ii. 194).

of the feudal system. Nor were they limited to the crown; we have the form by which the poor might place themselves under the *mundeburde* of the rich, still being free, "ingenuili ordine servientes." Formulæ Veteres Bignonii, c. 44; vide Naudet ubi supra. They were then even sometimes called, as the latter supposes, *lidi* or *liti*, so that a freeman, even of the higher class, might, at his option, fall, for the sake of protection, into an inferior position.

I have no hestitation in agreeing with Guizot that the conversion of allodial into feudal property was nothing more than an extension of the old commendation. It was not necessary that there should be an express surrender and regrant of the land; the acknowledgment of seigniory by the *commendatus* would supply the place. M. Naudet (Nouv. Mém. de l'Acad. des Inscrip. vol. viii.) accumulates proofs of commendation; it is surprising that so little was said of it by the earlier antiquaries. One of his instances deserves to be mentioned. "Isti homines," says a writer of Charlemagne's age, "fuerunt liberi et ingenui; sed quod militiam regis non valebant exercere, tradiderunt alodos suos sancto Germano."[c] (P. 567.) We may perhaps infer from this that the tenants of the church were not bound to military service. "No general law," says M. Guizot (Collect. de Mém. i. 419), "exempted them from it; but the clergy endeavored constantly to secure such an immunity, either by grant or by custom, which was one cause that their tenants were better off than those of laymen." The difference was indeed most important, and must have prodigiously enhanced the wealth of the church. But after the feudal policy became established we do not find that there was any dispensation for ecclesiastical fiefs. The advantage of their tenants lay in the comparatively pacific character of their spiritual lords. It may be added that, from many passages in the laws of the Saxons, Alemanns, and Barvarians, all the "commendati" appear to have been denominated vassals, whether they possessed benefices or not. That word afterwards implied a more strictly territorial limitation.

Thus then let the reader keep in mind that the feudal system, as it is commonly called, was the general establishment of a peculiar relation between the sovereign (not as king, but as lord) and his immediate vassals; between these again and others standing to them in the same relation of vassalage, and thus frequently through several links in the chain of tenancy. If this relation, and especially if the latter and essential element, subinfeudation, is not to be found, there is no feudal system, though there may be analogies to it, more or less remarkable or strict. But if he asks what were the immediate causes of establishing this polity, we must refer him to three alone—to the grants of beneficiary lands to the vassal and his heirs, without which there could hardly be subinfeudation; to the analogous grants of official honors, particularly that of count or governor of a district; and, lastly, to the voluntary conversion of allodial into feudal tenure, through free landholders submitting their persons and estates, by way of commendation, to a neighboring lord or to the count of a district. All these, though several instances, especially of the first, occurred much earlier, belong generally to the ninth century, and may be supposed to have been fully accomplished about the beginning of the tenth—to which period, therefore, and not to an earlier one, we refer the feudal system in France. We say in France, because our attention has been chiefly directed to that kingdom; in none was it of earlier origin, but in some it cannot be traced so high.

An hereditary benefice was strictly a fief, at least if we presume it

c It will be remarked that *liberi* and *ingenui* appear here to be distinguished: "not only free, but gentlemen."

to have implied military service; hereditary governments were not: something more, therefore, was required to assimilate these, which were far larger and more important than donations of land. And, perhaps, it was only by degrees that the great chiefs, especially in the south, who, in the decay of the Caroline race, established their patrimonial rule over extensive regions, condescended to swear fealty, and put on the condition of vassals dependent on the crown. Such, at least, is the opinion of some modern French writers, who seem to deny all subjection during the evening of the second and dawn of the third race. But if they did not repair to Paris or Laon in order to swear fealty, they kept the name of the reigning king in their charters.

The hereditary benefices of the ninth century, or, in other words, fiefs, preserved the nominal tie, and kept France from utter dissolution. They deserve also the greater praise of having been the means of regenerating the national character, and giving its warlike bearing to the French people; not, indeed, as yet collectively, but in its separate centres of force, after the pusillanimous reign of Charles the Bald. They produced much evil and misery; but it is reasonable to believe that they prevented more. France was too extensive a kingdom to be governed by a central administration, unless Charlemagne had possessed the gift of propagating a race of Alfreds and Edwards, instead of Louis the Stammerers and Charles the Balds. Her temporary disintegration by the feudal system was a necessary consequence; without that system there would have been a final dissolution of the monarchy, and perhaps its conquest by barbarians.

Note XII.

M. Thierry, whose writings display so much antipathy to the old nobility of his country that they ought not to be fully trusted on such a subject, observes that the Franks were more haughty towards their subjects than any other barbarians, as is shown in the difference of *weregild*. From them this spirit passed to the French nobles of the middle ages, though they were not all of Frank descent. "L'excès d'orgueil attaché à longtemps au nom de gentilhomme est ne en France; son foyer, comme celui de l'organization féodale, fut la Gaule du Centre et du Nord, et peut-être aussi l'Italie Lombarde. C'est de là qu'il s'est propagé dans les pays Germaniques, où la noblesse antérieurement se distinguait peu de la simple condition d'homme libre. Ce mouvement créa, partout où il s'étendit, deux populations, et comme deux nations, proprement distinctes." (Récits des Temps Mérovingiens, i. 250.)

The feudal principle was essentially aristocratic, and tended to enhance every unsocial and unchristian sentiment involved in the exclusive respect for birth. It had, of course, its countervailing virtues, which writers of M. Thierry's school do not enough remember. But a rural aristocracy in the meridian of feudal usages was insulated in the midst of the other classes of society far more than could ever happen in cities, or in any period of an advanced civilization. "Never," says Guizot, "had the primary social molecule been so separated from other similar molecules; never had the distance been so great between the simple and essential elements of society." The châtelain, amidst his machicolated battlements and massive gates with their iron portcullis, received the vavassor, though as an inferior, at his board; but to the roturier no feudal board was open; the owner of a "terre censive," the opulent burgess of a neighboring town, was as little admitted to the banquet of the lord as he was allowed to unite himself in marriage to his family.

Nec Deus hunc mensa, Dea nec dignata cubili est.

Pilgrims, indeed, and travelling merchants may, if we trust romance, have been always excepted. Although, therefore, some of Guizot's phrases seem overcharged, since there was, in fact, more necessary intercourse between the different classes than they intimate, yet that of a voluntary nature, and what we peculiarly call social, was very limited. Nor is this surprising when we recollect that it has been so till comparatively a recent period.

Guizot has copied a picturesque description of a feudal castle in the fourteenth century from Monteil's "Histoire des Français des divers Etats aux cinq derniers Siècles." It is one of the happiest passages in that writer, hardly more distinguished by his vast reading than by his skill in combining and applying it, though sometimes bordering on tediousness by the profuse expenditure of his commonplace-books on the reader.

"Représentez vous d'abord une position superbe, une montagne escarpée, herissé de rochers, silloné de ravins et de précipices; sur le penchant est le château. Les petites maisons qui l'entourent enfont ressortir la grandeur; l'Indre semble s'écarter avec respect; elle fait un large demi-cercle à ses pieds.

"Il faut voir ce château lorsqu'au soleil levant ses galéries extérieures reluisent des armures de ceux qui font le guet, et que ses tours se montrent toutes brillantes de leurs grandes grilles neuves. Il faut voir tous ces hauts bâtiments qui remplissent de courage ceux qui les défendent, et de frayeur ceux qui seraient tentés de les attaquer.

"La porte se présente toute couverte de têtes de sangliers ou de loups, flanquée de tourelles et couronnée d'un haut corps de garde. Entrez-vous? trois encientes, trois fosses, trois pont-levis à passer; vous vous trouverez dans la grande cour carrée où sont les citernes, et à droite ou à gauche les écuries, les poulaillers, les colombiers, les remises. Les caves, les souterrains, les prisons sont par dessous; par dessus sont les logements, les magasins, les lardoirs ou saloirs, les arsenaux. Tous les combles sont bordés des mâchicoulis, des parapets, des chemins le ronde, des guérites. Au milieu de la tour est le donjon, qui renferme les archives et le trésor. Il est profondement fossoyé dans tout son pourtour, et on n'y entre que par un pont presque toujours levé; bien que les murailles aient, comme celles du château, plus de six pieds d'épaisseur, il est revêtu jusqu'à la moitié de sa hauteur, d'une chemise, ou second mur, en grosses pierres de taille.

"Ce château vient d'être refait à neuf. Il y a quelque chose de léger, de frais, que n'avaient pas les châteaux lourds et massifs des siècles passés." (Civilis. en France, Leçon 35.)

And this was true; for the castles of the tenth and eleventh centuries wanted all that the progress of luxury and the cessation, or nearly such, of private warfare had introduced before the age to which this description refers; they were strongholds, and nothing more; dark, small, comfortless, where one thought alone could tend to dispel their gloom, that life and honor, and what was most valuable in goods, were more secure in them than in the campaign around.

Note XIII.

M. Guizot has declared it to be the most difficult of questions relating to the state of persons in the period from the fifth to the tenth century, whether there existed in the countries subdued by the Germans, and especially by the Franks, a numerous and important class of freemen, not vassals either of the king or any other proprietor, nor any way dependent upon them, and with no obligation except towards the state, its laws and magistrates. (Essais sur l'Hist. de France, p. 232.) And

this question, contrary to almost all his predecessors, he inclines to decide negatively. It is, indeed, evident, and is confessed by M. Guizot, that in the ages nearest to the conquest such a class not only existed, but even comprised a large part of the nation. Such were the owners of *sortes* or of *terra Salica*, the allodialists of the early period. It is also agreed, as has been shown in another place, that, towards the tenth century, the number of these independent landholders was exceedingly diminished by territorial commendation; that is, the subjection of their lands to a feudal tenure. The last of these changes, however, cannot have become general under Charlemagne, on account of the numerous capitularies which distinguish those who held lands of their own, or allodia, from beneficiary tenants. The former, therefore, must still have been a large and important class. What proportion they bore to the whole nation at that or any other era it seems impossible to pronounce; and equally so to what extent the whole usage of personal commendation, contradistinguished from territorial, may have reached. Still allodial lands, as has been observed, were always very common in the south of France, to which Flanders might be added. The strength of the feudal tenures, as Thierry remarks, was between the Somme and the Loire. (Récits des T. M. i. 245.) These allodial proprietors were evidently freemen. In the law of France allodial lands were always noble, like fiefs, till the reformation of the Coûtume de Paris in 1580, when "aleux roturiers" were for the first time recognized. I owe this fact, which appears to throw some light on the subject of this note, to Laferrière, Hist. du Droit Français, p. 129. But, perhaps, this was not the case in Flanders, which was an allodial country:—"La maxime française, nulle terre sans seigneur, n'avait point lieu dans les Pays-Bas. On s'en tenait au principe de la liberté naturelle des biens, et par suite à la necessité d'en prouver la sujétion ou la servitude; aussi les biens allodiaux étaient très nombreux, et rappelaient toujours l'ésprit de liberté que les Belges ont aimé et conservé tant à l'égard de leurs biens que de leurs personnes." (Mém. de l'Acad. de Bruxelles, vol. iii. p. 16.) It bears on this, that in all the customary law of the Netherlands no preference was given to sex or primogeniture in succession (p. 21.)

But there were many other freemen in France, even in the tenth century, if we do not insist on the absolute and insulated independence which Guizot requires. "If we must understand," says M. Guérard (Cartulaire de Chartres, p. 34), "by freemen those who enjoyed a liberty without restriction, that is, who, owing no duties or service to any one, could go and settle wherever they pleased, they would not be found very numerous in our chartulary during the pure feudal regimen. But if, as we should, we comprehend under this name whoever is neither a noble nor a serf, the number of people in this intermediate condition was very considerable." And of these he specifies several varieties. This was in the eleventh century, and partly later, when the conversion of allodial property had been completed.

Savigny was the first who proved the Arimanni of Lombardy to have been freemen, corresponding to the Rachimburgii of the Franks, and distinguished both from bondmen and from those to whom they owed obedience. Citizens are sometimes called Arimanni. The word occurs, though very rarely, out of Italy. (Vol. i. p. 176, English translation.) Guizot includes among the Arimanni the leudes or beneficiary vassals. See, too, Troja, v. 146, 148. There seems, indeed, no reason to doubt that vassals, and other *commendati*, would be counted as Arimanni. Neither feudal tenure nor personal commendation could possibly derogate from a free and honorable *status*.

Note XIV.

These names, though in a general sense occupying similar positions in the social scale, denote different persons. The coloni were Romans, in the sense of the word then usual; that is, they were the cultivators of land under the empire, of whom we find abundant notice both in the Theodosian Code and that of Justinian.[a] An early instance of this use of the word occurs in the Historiæ Augustæ Scriptores. Trebellius Pollio says, after the great victory of Claudius over the Goths, where an immense number of prisoners was taken—"Factus miles barbarus ac colonus ex Gotho;" an expression not clear, and which perplexed Salmasius. But it may perhaps be rendered, the barbarians partly entered the legions, partly cultivated the ground, in the rank of coloni. It is thus understood by Troja (ii. 705). He conceives that a large proportion of the coloni, mentioned under the Christian emperors, were barbarian settlers (iii. 1074). They came in the place of prædial slaves, who, though not wholly unknown, grew less common after the establishment of Christianity. The Roman colonus was free; he could marry a free woman, and have legitimate children; he could serve in the army, and was capable of property; his peculium, unlike that of the absolute slave, could not be touched by his master. Nor could his fixed rent or duty be enhanced. He could even sue his master for any crime committed with respect to him, or for undue exaction. He was attached, on the other hand, to the soil, and might in certain cases receive corporal punishment. (Troja, iii. 1072.) He paid a capitation tax or census to the state, the frequent enhancement of which contributed to that decline of the agricultural population which preceded the barbarian conquest. Guizot, in whose thirty-seventh lecture on the civilization of France the subject is well treated, derives the origin of this state of society from that of Gaul before the Roman conquest. But since we find it in the whole empire, as is shown by many laws in the Code of Justinian, we may look on it perhaps rather as a modification of ancient slavery, unless we suppose *all* the coloni,[b] in this latter sense of the word, to have been originally barbarians, who had received lands on condition of remaining on them. But this, however frequent, seems a basis not quite wide enough for so extensive a tenure. Nor need we believe that the coloni were always raised from slavery; they might have descended into their own order, as well as risen to it. It appears by a passage in Salvian, about the middle of the fifth century, that many freemen had been compelled to fall into this condition; which confirms, by analogy, the supposition above mentioned of M. Naudet, as to a similar degradation of a part of the Franks themselves after the conquest. It was an inferior species of commendation or vassalage, or, more strictly, an analogous result of the state of society.

The forms of Marculfus, and all the documents of the following ages, furnish abundant proofs of the continuance of the coloni in this middle state between entire freedom and servitude. And these were doubtless reckoned among the "tributarii" of the Salic law, whose composition was fixed at forty-five solidi; for a slave had no composition due to his kindred; he was his master's chattel, and to be paid for as such. But the tributary was not necessarily a colonus. All who possessed no lands were subjected by the imperial fisc to a personal capitation. And it has appeared to us that the Romans in Gaul continued regularly to pay this under the house of Clovis. To these Roman tributaries the bar-

a See Cod. Theod. l. v. tit. 9, with the copious Paratitlon of Gothofred.—Cod. Just. xi. tit. 47 et alibi.

b The colonus of Cato and other classical authors was a free tenant or farmer, as has been already mentioned.

barian lidi seem nearly to have corresponded. This was a class, as has been already said, not quite freeborn; so that "Francus ingenuus" was no tautology, as some have fancied, yet far from slaves; without political privileges or rights of administering justice in the county court, like the Rachimburgii, and so little favored, that, while the Frank accused of a theft, that is, I presume, taken in the fact, was to be brought before his peers, the lidus, under the name of "debilior persona," which probably included the Roman tributary, was to be hanged on the spot. Throughout the Salic and Ripuarian codes the ingenuus is opposed both to the lidus and to the servus; so that the threefold division is incontestable. It corresponds in a certain degree to the *edelingi, frilingi,* and *lazzi,* or the *eorl, ceorl,* and *thrall* of the northern nations (Grimm, Deutsche Rechts Alterthümer, p. 306 *et alibi*); though we do not find a strict proportion in the social state of the second order in every country. The "coloni partiarii," frequently mentioned in the Theodosian Code, were *métayers;* and M. Guérard says that lands were chiefly held by such in the age of Charlemagne and his family. (Cart. de Chartres, i. 109.) The demesne lands of the manor, however, were never occupied by coloni, but by serfs or domestic slaves.

Note XV.

The poor early felt the necessity of selling themselves for subsistence in times of famine. "Subdiderunt se pauperes servitio," says Gregory of Tours, A.D. 585, "ut quantulumcunque de alimento porrigerent." (Lib. vii. c. 45.) This long continued to be the practice; and probably the remarkable number of famines which are recorded, especially in the ninth and eleventh centuries, swelled the sad list of those unhappy poor who were reduced to barter liberty for bread. Mr. Wright, in the thirtieth volume of the Archæologia (p. 223), has extracted an entry from an Anglo-Saxon manuscript, where a lady, about the time of the Conquest, manumits some slaves, "whose heads," as it is simply and forcibly expressed, "she had taken for their meat in the evil days." Evil indeed were those days in France, when out of seventy-three years, the reigns of Hugh Capet and his two successors, forty-eight were years of famine. Evil were the days for five years from 1015, in the whole western world, when not a country could be named that was not destitute of bread. These were famines, as Radulfus Glaber and other contemporary writers tell us, in which mothers ate their children, and children their parents; and human flesh was sold, with some pretence of concealment, in the markets. It is probable that England suffered less than France; but so long and frequent a scarcity of necessary food must have affected, in the latter country, the whole organic frame of society.

It has been a very general opinion that during the lawlessness of the ninth and tenth centuries, the aristocratic element of society continually gaining ground, the cultivators fell into a much worse condition, and either from freemen became villeins, or, if originally in the order of tributaries, became less and less capable of enjoying such personal rights as that state implied; that they fell, in short, almost into servitude. "Dans le commencement de la troisème race," says Montesquieu, "presque tout le bas peuple était serf." (Lib. xxviii. c. 45.) Sismondi, who never draws a favorable picture, not only descants repeatedly on this oppression of the commonalty, but traces it by the capitularies. "Les loix seules nous donnent quelque indication d'une révolution importante à laquelle la grande masse du peuple fut exposée à plusieurs reprises dans toute l'étendue des Gaules,—

révolution qui, s'étant opérée sans violence, n'a laissé aucune trace dans l'histoire, et qui doit cependant expliquer seule les alternatives de force et de faiblesse dans les états du moyen age. C'est le passage des cultivateurs de la condition libre à la condition servile. L'esclavage étant une fois introduite et protégée par les loix, la conséquence de la prospérité, de l'accroissement des richesses devait être toujours la disparition de toutes les petites propriétés, la multiplication des esclaves, et la cessation absolue de tout travail qui ne serait pas fait par des mains serviles." (Hist. des Français, vol. ii. p. 273). Nor should we have believed, from the general language of historical antiquaries, that any change for the better took place till a much later era. We know indeed from history that, about the year 1000, the Norman peasantry, excited by oppression, broke out into a general and well-organized revolt, quelled by the severest punishments. This is told at some length by Wace, in the "Roman de Rou." And every inference from the want of all law except what the lords exercised themselves, from the strength of their castles, from the fierceness of their characters, from the apparent inability of the peasants to make any resistance which should not end in greater sufferings, converges to the same result.

It is not therefore without some surprise that, in a recent publication, we meet with a totally opposite hypothesis on this important portion of social history. The editor of the Cartulaire de Chartres maintains that the peasantry, at the beginning of the eleventh century, enjoyed rights of property and succession which had been denied to their ancestors; that the movement from the ninth century had been upwards; so that, during that period of anarchy which we presume to have been exceedingly unfavorable to their privileges, they had in reality, by force, usage, or concession, gained possession of them. They could not indeed leave their lands, but they occupied them subject to known conditions.

The passage wherein M. Guérard, in a concise and perspicuous manner, has given his own theory as to the gradual decline of servitude deserves to be extracted; but I regret very much that he refers to another work, not by name, and unknown to me, for the full proof of what has the air of an historical paradox. With sufficient proof every paradox loses its name; and I have not the least right, from any deep researches of my own, to call in question the testimony which has convinced so learned and diligent an inquirer.

"La servitude, comme je l'ai exposé dans un autre travail, alla toujours chez nous en s'adoucissant jusqu'à ce qu'elle fut entièrement abolie à la chute de l'ancien régime: d'abord c'est l'esclavage à-peu-près pur, qui réduisait l'homme presque à l'ètat de chose, et qui le mettait dans l'entière dépendance de son maitre. Cette pêriode peut être prolongée jusqu'après la conquête de l'empire d'Occident par les barbares. Depuis cette époque jusques vers la fin du règne de Charles-le-Chauve, l'esclavage proprement dit est remplacé par la servitude, dans laquelle la condition humaine est reconnue, respectée, protégée, si ce n'est encore d'une manière suffisante, par les loix civiles, au moins plus efficacement par celles de l'eglise et par les mœurs sociàles. Alors le pouvoir de l'homme sur son semblable est contenu généralement dans certains limites; un frein est mis d'ordinaire à la violence; la règle et la stabilitê l'emportent sur l'arbitraire: bref, la liberté et la propriété pénètrent par quelque endroit dans la cabane du serf. Enfin, pendant le désordre d'oú sortit triomphant le régime fêodal, le serf soutient contre son maître la lutte soutenue par le vassal contre son seigneur, et par les seigneurs contre le roi. Le succès fut le même de part et d'autre; l'usurpation des tenures serviles accompagna celle des tenures libérales, et l'appropriation territoriale ayant

eu lieu partout, dans le bas comme dans le haut de la société, il fut aussi difficile de déposséder un serf, de son manse qu'un seigneur de son bénéfice. Dès ce moment la servitude fut transformée en servage; le serf, ayant retiré sa personne et son champ des mains de son maître, dut à celui-ci non plus son corps ni son bien, mais seulement une partie de son travail et de ses revenus. Dès ce moment il a cessé de servir; il n'est plus en réalité qu'un tributaire.

" Cette grande révolution, qui tira de son état abject la classe la plus nombreuse de la population, et qui l'investit de droits civils, lorsque auparavant elle ne pouvait guère invoquer en sa faveur que les droits de l'humanité, n'avait pas encore été signalée dans notre histoire. Les faits qui la démontrent ont été developpé dans un autre travail que je ne puis reproduire ici; mais les traces seules qu'elle a laissées dans notre Cartulaire sont assez nombreuses et assez profondes pour la faire universellement reconnaitre. Elle était depuis long-temps consommée, lorsque le moine rédigeait, dans la seconde moitié du XIe. siècle, la première partie du présent recueil, et lorsqu'il déclarait que les anciens rôles (écrits au IXe.) conservés dans les archives de l'Abbaye, n'accordent aux paysans ni les usages ni les droits dont ils jouissant actuellement. Mais ses paroles méritent d'être, répétées:—' Lectori intimare curavi,' dit-il dans sa Préface, ' quod ea quæ primo scripturus sum a præsenti usu admodum discrepare videntur, nam rolli conscripti ab antiquis et in armario nostro nunc reperti, habuisse minimi ostendunt illius temporis rusticos has consuetudines in reditibus quas moderni rustici in hoc tempore dinoscuntur habere, neque habent vocabula rerum quas tunc sermo habebat vulgaris.' Ainsi non seulement les choses, mais encore les noms, tout était changé." (Prolégomènes à la Cartulaire de Chartres, p. 40.)

The characteristic of the villein, according to Beaumanoir, in the thirteenth century, that his obligations were fixed in kind and degree, would thus appear to have been as old as the eleventh. Many charters of the tenth and eleventh centuries are adduced by M. Guérard, wherein, as he informs us, " On s'efforce de se soustaire à la violence, et d'y substituer les conventions à l'arbitraire; la règle et la mesure tendent à s'introduire partout et jusques dans les extortions memes " (p. 109). But this principle of limited rent was also that of the Roman system with respect to the *coloni* before the conquest of Gaul by Clovis. Nor do we know that it was different afterwards. No law at least could have effected it; for the Roman law, by which the *coloni* were ruled, underwent no change.

M. Guérard seems hardly to have taken a just view of the *status* of the Roman tributary or colonus. " Nous avons dit que les personnes de condition servile s'étaient appropriés leurs bénéfices. Ce que vient encore nous confirmer dans cette opinion, c'est le changement qu'on observe généralement dans la condition des terres depuis le déclin du Xe siècle. La terre, après avoir été cultivée dans l'antiquité par l'esclave au profit de son maître, le fut ensuite par un espèce de fermier non libre qui partageait avec le propriétaire, ou qui faisait les fruits siens, moyennant certains cens et services, auxquels il était obligé envers lui: c'est l'état qui nous est représenté par le Polyptyque d'Irminon, au temps de Charlemagne, et qui dura encore un siècle et demi environ après la mort de ce grand prince. Puis commence une troisème période, pendant laquelle le propriétaire, n'est plus que seigneur, tandis que le tenancier est devenu lui-même propriétaire, et paie, non plus de fermages, mais seulement des droits seigneuriaux. Ainsi, d'abord obligations d'un esclave envers un maître ensuite obligations d'un fermier non libre envers un propriétaire; enfin, obligations d'un propriétaire non libre envers un seigneur. C'est à la dernière période que nous sommes parvenus dans notre Cartulaire. Les populations s'y montrent en

jouissance du droit de propriéte, et ne sont soumises, á raison des possessions, qu'à de simples charges féodales."

It may be observed upon this, that the colonus was a free man, whether he divided the produce with his lord, like the *métayer* of modern times, or paid a certain rent; and, secondly, that, in what he calls the third period, the tenant, if he was a villein or homme de poote, could not possibly be called "lui-même propriétaire;" nor were his liabilities feudal, but either a money-rent or personal service in labor; which cannot be denominated feudal without great impropriety.

"Il est vrai," he proceeds, "que ces charges sont encore lourdes et souvent accablantes, et que les biens ne sont pas plus les personnes entièrement francs et libres; ni suffisamment à l'abri de l'arbitraire et de la violence; mais la liberté, acquise de jour en jour à l'homme, se communiquait de plus en plus à la terre. Le paysan étant propriétaire, il ne lui restait qu'à degréver et affranchir la propriété. C'est à cet œuvre qu'il travaillera désormais avec persévérance et de toutes ses forces jusqu'à ce qu'il ait enfin obtenu de ne supporter d'autres charges que celles qui conviennent à l'homme libre, et qui sont uniquement fondées sur l'utilité commune."

In this passage the tenant is made much more to resemble the free socager of England than the villein or homo postatis of Pierre des Fontaines or Beaumanoir. This latter class, however, was certainly numerous in their age, and could hardly have been less so some centuries before. These were subject to so many onerous restrictions, independent of their compulsory residence on the land, and independently also of their want of ability to resist undue exactions, that they were always eager to purchase their own enfranchisement. Their marriages were not valid without the lord's consent, till Adrian IV., in the twelfth century, declared them indissoluble. A freeman marrying a serf became one himself, as did their children. They were liable to occasional as well as regular demands, that is, to tallages, sometimes in a very arbitrary manner. It was probably the less frequency of such demands, among other reasons, that rendered the condition of ecclesiastical tenants more eligible than that of others. Manumissions of serfs by the church were very common; and, indeed, the greater part that have been preserved, as may be expected, come from ecclesiastical repositories. It is observed in my text that the English clergy are said to have been slow in liberating their villeins. But a villein in England was real property; and I conceive that a monastery could not enfranchise him, at least without the consent of some superior authority, any more than it could alienate its lands. The church were not generally accounted harsh masters.

Note XVI.

There would seem naturally little doubt that *majorum* can mean nothing but the higher classes of clergy and laity, exclusive of parish priests and ordinary freemen, were it not that a part of these very *majores* are afterwards designated by the name *minores*. Who, it may be asked, could be the *majores clerici*, except prelates and abbots? And of these, how could one be so inferior in degree to another as to be reckoned among *minores?* It may perhaps be answered that there was nevertheless a difference of importance, though not of rank. Guizot translates *majores* "les grands," and *minores* "les moins considérables." But upon this construction which certainly is what the words fairly bear, none but a class denominated *majores*, relatively to the rest of the nation, were members of the national council. I think, nevertheless, that Guizot, on any hypothesis, has too much depreciated the

authority of these general meetings, wherein the capitularies of Charlemagne were enacted. Grant, against Mably, that they were not a democratic assembly; still were they not a legislature? "Lex consensu fit populi et constitutione regis." This is our own statute language; but does it make parliament of no avail? "En lui (Charlemagne) réside la volonté et l'impulsion; c'est de lui que toute émane pour revenir à lui." (Essais sur l'Hist. de France, p. 323.) This is only to say that he was a truly great man, and that his subjects were semi-barbarians, comparatively unfit to devise methods of ruling the empire. No one can doubt that he directed everything. But a weaker sovereign soon found these rude nobles an overmatch for him. It is, moreover, well pointed out by Sir F. Palgrave, that we find instances of petitions presented by the lay or spiritual members of these assemblies to Charlemagne, upon which capitularies or edicts were afterwards founded. (English Commonwealth, ii. 411.) It is to be inferred, from several texts in the capitularies of Charlemagne and his family, that a general consent was required to their legislative constitutions, and that without this a capitulary did not become a law. It is not, however, quite so clear in what method this was testified; or rather two methods appear to be indicated. One was that above described by Hincmar, when the determination of the *seniores* was referred to the *minores* for their confirmation: "interdum pariter tractandum, et non ex potestate sed ex proprio mentis intellectu vel sententiâ confirmandum." The point of divergence between two schools of constitutional antiquaries in France is on the words *ex postestate*. Mably, and others whom I have followed, say "not by compulsion," or words to that effect. But Guizot renders the words differently: "quelquefois on délibérait aussi, et les confirmaient, non par un consentement formal, mais par leur opinion, et l'adhésion de leur intelligence." The Latin idiom will, I conceive, bear either construction. But the context, as well as the analogy of other authorities, inclines me to the more popular interpretation, which, though the more popular, does not necessarily carry us beyond the word *majores*, taking that as descriptive of a numerous aristocracy.

If, indeed, we are so much bound by the *majorum* in this passage of Hincmar as to take for merely loose phrases the continual mention of the *populus* in the capitularies, we could not establish any theory of popular consent in legislation from the general placita held almost every May by Charlemagne. They would be conventions of an aristocracy; numerous indeed, and probably comprehending by right all the vassals of the crown, but excluding the freemen or petty allodialists, not only from deliberating upon public laws, but from consenting to them. We find, however, several proofs of another method of obtaining the ratification of this class, that is of the Frank people. I do not allude to the important capitulary of Louis (though I cannot think that M. Guizot has given it sufficient weight), wherein the count is directed to bring twelve Scabini with him to the imperial placitum, because we are chiefly at present referring to the reign of Charlemagne; and yet this provision looks like one of his devising. The scheme to which I refer is different and less satisfactory. The capitulary determined upon by a national placitum was sent round to the counts, who were to read it in their own *mallus* to the people, and obtain their confirmation. Thus in 803, "Anno tertio clementissimi domini nostri Karoli Augusti, sub ipso anno hæc facta capitula sunt, et consignata Stephano comiti, ut hæc manifesta faceret in civitate Parisiis, mallo publico, et illa legere faceret coram Scabiniis, quod ita et fecit. Et omnes in uno consenserunt, quod ipsi voluissent omni tempore observare usque in posterum. Etiam omnes Scabinii, Episcopi, Abbates, Comites manu propria subter signaverunt." (Rec. des Hist. v. 663.) No text can be

more perspicuous than this; but several other proofs might be given, extending to the subsequent reigns.

Sir F. Palgrave is, perhaps, the first who has drawn attention to this scheme of local sanction by the people; though I must think that he has somewhat obscured the subject by supposing the *malli*, wherein the capitulary was confirmed, to have been those of separate nations constituting the Frank empire, instead of being determined by the territorial jurisdiction of each count. He gives a natural interpretation to the famous words, "Lex consensu populi fit, constitutione regis." The capitulary was a constitution of the king, though not without the advice of his great men; the law was its confirmation by the nation collectively, in the great placitum of the Field of March, or by separate consent and subscription in each county.

We are not, however, to be confident that this assent of the people in their county courts was virtually more than nominal. A little consideration will show that it could not easily have been otherwise, except in the strongest cases of unpopular legislation. No Scabini or Rachimburgii in one county knew much of what passed at a distance; and dissatisfaction must have been universal before it could have found its organ in such assemblies. Before that time arrived rebellion was a more probable effect. One capitulary, of 823, does not even allude to consent: "In suis comitatibus coram nota fieri possit." But we cannot set this against the language of so many other capitularies, which imply a formal ratification.

Note XVII.

The court of the palace possessed a considerable jurisdiction from the earliest times. We have its judgments under the Merovingian kings. Thus in a diploma of Clovis III., A.D. 693, dated at Valenciennes—"Cum ad universorum causas audiendas vel recta judicia terminanda resideremus." (Rec. des Hist. iv. 672.) Under the house of Charlemagne it is fully described by Hincmar in the famous passage above mentioned. It was not so much in form a court of appeal as one acting by the sovereign's authority, to redress the oppression of the subject by inferior magistrates. Mr. Allen has well rejected the singular opinion of Meyer, that an erroneous or corrupt judgment of the inferior court was not reversible by this royal tribunal, though the judges might be punished for giving it. (Inquiry into Royal Prerogative, Appendix, p. 29.) Though, according to what is said by M. Beugnot, the appeal was not made in regular form, we cannot doubt that, where the case of injury by the inferior judge was made out, justice would be done by annulling his sentence. The emperor or king often presided here; or, in his absence, the count of the palace. Bishops, counts, household officers, and others constituted this court, which is not to be confounded with that of the seneschal, having only a local jurisdiction over the domains of the crown, and which did not continue under the house of Capet. (Beugnot, Régistres des Arrêts, vol. i. p. 15, 18, in Documens Inédits, 1839.)

This tribunal, the court of the palace, was not founded upon any feudal principle; and when the right of territorial justice and the subordination of fiefs came to be thoroughly established, it ought, according to analogy, to have been replaced by one wherein none but the great vassals of France should have sat. Such, however, was not the case. This is a remarkable anomaly, and a proof that the spirit of monarchy was not wholly extinguished. For, weak as was the crown under the first Capets, their court, though composed of persons by no means the peers of all who were amenable to it, gave several judgments af-

fecting some considerable feudatories, such as the Count of Anjou under Robert. (Id. p. 22.) No court composed only of great vassals appears in the eleventh or twelfth centuries; no notion of judicial subordination prevailed; the vassals of the crown sat with those of the duchy of France; and latterly even clerks came in as assessors or advisers, though without suffrage (p. 31). But an important event brought forward, for the first time, the true feudal principle. This was the summons of John, as Duke of Normandy, to justify himself as to the death of Arthur. It has been often said that twelve peers of France had appeared at the coronation of Philip Augustus, in 1179. This, however, a late writer has denied, and does not place them higher than the proceedings against John, in 1204. (Id. p. 44.) In civil causes, as has above been said, there had been several instances wherein the king's court had pronounced judgment against vassals of the crown. The idea had gained ground that the king, by virtue of his full prerogative, communicated to all who sat in that court a portion of of his own sovereignty. Such an opinion would be sanctioned by the bishops, and by all who leaned towards the imperial theory of government, never quite eradicated in the church. But the high rank of John, and the important consequences likely to result from his condemnation, forbade any irregularity of which advantage might be taken. John is always said to have been sentenced, "judicio parium suorum;" whence we may conclude that inferior lords did not take a part. (Id. ibid.) And from that time we find abundant proofs of the peerage of France, composed of six lay and six spiritual persons; though upon this supposition Normandy was never a substantial member of that class, having only appeared for a moment to vanish in the next by its reunion to the domain.

The feudal principle seemed now to have recovered strength: a right which the vassals had never enjoyed, though in consistency their due, was formally conceded. But it was too late in the thirteenth century to render any new privilege available against the royal power. Though it was from that time an uncontested right of the peers to be tried by some of their order, this was construed so as not to exclude others, in any number, and with equivalent suffrage. One or more peers being present, the court was, in a later phrase, "suffisamment garnie de pairs;" and thus the lives and rights of the Dukes of Guienne or Burgundy were at the mercy of mere lawyers.

Note XVIII.

Savigny, in his History of Roman Law in the Middle Ages, and Raynouard, in his Histoire du Droit Municipal (1828), have, since the first publication of this work in 1818, traced the continuance of municipal institutions, in several French cities, from the age of the Roman empire to the twelfth century, when the formal charters of communities first appear. But it will render the subject clearer if we look at the constitution which Rome gave to the cities of Italy, and ultimately of the provinces. We are not concerned with the privileges of Roman citizenship, whether local or personal, but with those appertaining to each city. These were originally founded on the republican institutions of Rome herself; the supreme power, so far as it was conceded, and the choice of magistrates, rested with the assembly of the citizens. But after Tiberius took this away from the Roman comitia to vest it in the senate, it appears that, either through imitation or by some imperial edict, this example was followed in every provincial city. We find everywhere a class named "curiales," or "decuriones" (syonymous words), in whom, or in those elected by them, resided whatever

authority was not reserved to the proconsul or other Roman magistrate. Though these words occur in early writers, it must be admitted that our chief knowledge of the internal constitution of provincial cities is derived from the rescripts of the later emperors, especially in the Theodosian code.

The decurions are several times mentioned by Pliny. In Greek or Asiatic towns the word βούλη answered to curia, and βουλεύτης to decurio. Pliny refers to a lex Pompeia, probably of the great Pompey, which appears to have regulated the internal constitution, at least of the Pontic and Bithynian cities. According to this, the members of the council, or βούλη, were named by certain censors, to whose list the emperor, in the time of Pliny, added a few by especial favor. (Plin. Epist. x. 113.) In later times the decurions are said to have chosen their own members, which can mean little more than that the form of election was required, for birth or property gave an inchoate title. They were a local aristocracy,[a] requiring perhaps originally the qualification of wealth, which in the time of Pliny, at least in Asia, was of a hundred thousand sesterces, or about 800*l.* (Epist. i. 19.) But latterly it appears that every son of a decurion inherited the rights as well as the liabilities of his father. We read, "qui origine sunt curiales," and "honor quem nascendo meruit." Property, however, gave a similar title; every one possessing twenty-five jugera of freehold ought to be inscribed in the order. This title, honorable to Roman ears, *ordo decurionum*, or simply *ordo*, is always applied to them. They were summoned on the Kalends of March to choose municipal officers, of whom the most remarkable were the duumvirs, answering to the consuls of the imperial city. These possessed a slight degree of civil and criminal jurisdiction, and were bound to maintain the peace. They belonged, however, only to cities enjoying the *jus Italicum*, a distinction into which we need not now inquire; and Savigny maintains that, in Gaul especially, which we chiefly regard, no local magistrate, in a proper sense, ever existed, the whole jurisdiction devolving on the imperial officers. This is far from the representation of Raynouard, who, though writing after Savigny, seems ignorant of his work, nor has it been adopted by later French inquirers.

But another institution is highly remarkable, and does peculiar honor to the great empire which established it, that of Defensor Civitatis—a standing advocate for the city against the oppression of the provincial governor. His office is only known by the laws from the middle of the fourth century, the earliest being of Valentinian and Valens, in 365; but both Cicero (Epist. xii. 56) and Pliny (Epist. x. 3) mention an Ecdicus with something like the same functions; and Justinian always uses that word to express the Defensor Civitatis. He was chosen for five years, not by the curiales, but by the citizens at large. Nor could any decurion be defensor; he was to be taken "ex aliis idoneis personis;" which Raynouard translates, "among the most distinguished inhabitants;" a sense neither necessary nor probable. (Cod. Theod. i. tit. xi.; Du Cange; Troja, iii. 1066; Raynouard, i. 71.)

The duties of the defensor will best appear by a passage in a rescript of A.D. 385, inserted in the Code of Justinian:—"Scilicet, ut in primis parentis vicem plebi exhibeas, descriptionibus rusticos urbanosque non patiaris affligi; officialium insolentiæ et judicum procacitati, salva reverentia pudoris, occurras; ingrediendi cum voles ad judicem liberam habeas facultatem; super exigendi damna, vel spolia plus petentium ab his quos liberorum loco tueri debes, excludas; nec patiaris quidquam ultra delegationem solitam ab his exigi, quos certum est nisi tali remedio

[a] Though I use this word, which expresses a general truth, yet, in strictness of law, the decurions were "nullâ prædíti dignitate." (Cod. Theod. 12, 1, 6.)

non posse reparari." (Cod. i. 55, 4.) But the defensors were also magistrates and preservers of order:—" Per omnes regiones in quibus fera et periculi sui nescia latronum fervet insania, probatissimi quique et districtissimi defensores adsint disciplinæ, et quotidianis actibus præsint, qui non sinant crimina impunita coalescere; removeant patrocinia quæ favorem reis, et auxilium scelerosis impartiendo, maturari scelera fecerunt." (Id. i. 55, 6. See, too, Theod. *ubi supra.*)

It may naturally be doubted whether the principles of freedom and justice, which dictated these municipal institutions of the empire, were fully carried out in effect. Perhaps it might be otherwise even in the best times—those of Trajan and the Antonines. But in the decline of the empire we find a striking revolution in the condition of the decurions. Those evil days rendered necessary an immense pressure of taxation; and the artificial scheme of imperial policy, introduced by Diocletian and perfected by Constantine, had for its main object to drain the resources of the provinces for the imperial treasury. The decurions were made liable to such heavy burdens, their responsibility for local as well as public charges was so extensive (in every case their private estates being required to make up the deficiency in the general tax), that the barren honors of the office afforded no compensation, and many endeavored to shun them. This responsibility, indeed, of the decurions, and their obligation to remain in the city of the domicile, as well as their frequent desire to escape from the burdens of their lot, is manifest even in the Digest, that is, in the beginning of the third century (when the opinions of the lawyers therein collected were given), while the empire was yet unscathed; but the evil became more flagrant in subsequent times. The laws of the fourth and fifth centuries, in the Theodosian code, perpetually compel the decurions, under severe penalties, to remain at home and undergo their onerous duties. These laws are 192 in number, filling the first title of the twelfth book of that code. Guizot indeed, Savigny, and even Raynouard (though his bias is always to magnify municipal institutions), have drawn from this source such a picture of the condition of the decurions in the last two centuries of the western empire, that we are almost at a loss to reconcile this absolute impoverishment of their order with other facts which apparently bear witness to a better state of society. For, greatly fallen as the decurions of the provincial cities must be deemed, in comparison with their earlier condition, there was still, at the beginning of the fifth century, especially in Gaul, a liberal class of good family, and not of ruined fortunes, dwelling mostly in cities, or sometimes in villas or country houses not remote from cities, from whom the church was replenished, and who kept up the politeness and luxury of the empire.[b] The senators or senatorial families are often mentioned; and by the latter term we perceive that an hereditary nobility, whatever might be the case with some of the barbarian nations, subsisted in public estimation, if not in privilege, among their Roman subjects. The word senate appears to be sometimes used for the curia at large;[c] but when we find *senatorius ordo*, or *senatorium genus*, we may refer it to the higher class, who had served municipal offices, or had become privileged by imperial favor, and to whom the

b The letters of Sidonius Apollinaris bear abundant testimony to this, even for his age, which was after the middle of the century; and the state of Gaul must have been much better before. Salvian, too, in his declamation against the vices of the provincials, gives us to understand that they were the vices of wealth.

c This was rather by analogy than in strictness: thus, " Suæ, *si sic dici oportet*, curiæ senatorem." (Lib. 12, tit. 1, lex 85.) But perhaps the language in different parts of the empire, or in different periods, might not be the same. The law just cited is of Arcadius. But Majorian says in the next age and in the West, of the curiales, " Quorum cœtum recte appellavit antiquitas minorem senatum." (Gothofred, in leg. 85, suprà citat.) Some modern writers too must confound all who are denominated senators with the curiales.

title of "clarissimi" legally belonged. It seems probable that this appellative senator, rather than senior, has given rise to seigneur, sire, and the like in modern languages. The word *senatorius* appears early to have acquired the meaning noble or gentlemanlike; though I do not find this in the dictionaries. This is, I conceive, what Pliny means by the "quidam senatorius decor," which he ascribes to his young son-in-law Acilianus. (Epist. i. 14.) It is the air noble, the indescribable look, rarely met with except in persons of good birth and liberal habits. In the age of Pliny this could only refer to the Roman senate.[d]

A great number of laws in this copius title of the Theodosian code, many of which are cited by Raynouard (vol. i. p. 80), manifest a distinction between the curia and the senate, or, as it is sometimes called, "nobilissima curia;" and though perhaps, in certain instances, they may be referred to the great senates of Rome or Constantinople, which were the fountains of all provincial dignity of this kind, there are others which can only be explained on the supposition that they relate to decurions, as it were *emeriti*, and promoted to a higher rank. Thus, one of Valentinian and Valens, in 364, which is the earliest that seems explicit:—"Nemo ad ordinem senatorium ante functionem omnium munerum municipalium senator accedat. Cum autem universis transactis, patriæ stipendia fuerit emensus, tum eum ita ordinis senatorii complexus excipiet, ut reposcentium civium flagitatio non fatiget." (Lex. lvii.) The second title of the sixth book of the Theodosian code, "De Senatoribus," is unfortunately lost; but Gothofred has restored a Paratitlon from other parts of the same code, and especially from the title above mentioned, in the twelfth book, by reference to which this part of the imperial constitution will be best understood. It appears difficult to explain every passage. But on the whole we cannot hesitate to agree with Guizot and Savigny, that the name of senator was given to a privileged class in the provincial cities, who, having served through all the public functions of the curia, were entitled to a legal exemption in future, and ascended to the dignity of "Clarissimi." Many others, independent of the decurions, obtained this rather by the emperor's favor, or by the performance of duties which regularly led to it. They were nominated by the emperor, and might be removed by him; but otherwise their rank was hereditary. Those decurions, therefore, who could bear the burdens of municipal liabilities without impoverishment, rose so far above them that their families were secure in wealth as well as privilege. Thus the word senator must be taken, in relation to them, as merely an aristocratic distinction, without regard to its original sense.[e] It is sufficiently clear that senatorial families, by whatever means separated from the rest, constituted the nobility of Gaul. Thus we read in Gregory of Tours (lib. ii. c. 21, *sub ann.* 475)—"Sidonius vir secundum sæculi dignitatem nobilissimus, et de primis Galliarum senatoribus, ita ut filiam sibi Aviti imperatoris in matrimonio sociârit." Another is called "vir valde nobilis et de primis senatoribus Galliarum." Other passages from the same historian might be adduced. But this is not to our immediate purpose, which is to trace briefly the state of municipal institutions in Gaul. The senatorial order, or Roman provincial nobility, of which we have just been speaking, is different.

d I presume that Sidonius Apollinaris means something complimentary where he says—"Prandebamus breviter, copiose, *senatorium ad morem;* quo insitum institutumque multas epulas paucis paropsidibus apponi."—Epist. ii. 9.

The hereditary nobility of the senate, implying purity of blood, was recognized very early in imperial Rome. By the lex Julia, the descendants of senators to the fourth generation were incapable of marrying *libertinæ*.—Dig. xxiii. 2, 44.

e For this distinction between *curiales* and *senatores* the reader many consult the title of the Theodosian code on Decurions, above cited, Leg. 82, 90, 93, 108, 110, 111, 118, 122, 129, 130, 180, 182, 183; all of which throw some light upon, or relate to, this rather obscure subject. Guizot, Savigny, and Raynouard are the modern guides.

Raynouard, the diligent elucidator of this great question, answers the very specious objection of Mably, drawn from the silence of the capitularies, which, though addressed to many classes of magistrates, never mention any peculiar to the cities, by observing that these capitularies were not designed for those who lived by the Roman law. (Vol. ii. p. 160.) Savigny had already made the same remark. There seems to be some force in this answer; and at least it is impossible to argue with Mably, from a negative probability, against the indisputable evidence that the municipal magistrates of some cities were in being. It may be justly doubted, indeed, whether they possessed a considerable authority. Subject to the count, as the great depositary of royal power, they would not perhaps be held worthy of receiving immediate commands from the sovereign in the national council. Troja speaks with contempt of these "curiæ," whose chief business was to register testaments and witness deeds: "Son sempre i medisimi ed anche derisorj i ricordi delle curie, ridotte alle funzioni di registrar testamenti, donazioni e contratti, o ad elegger magistrati che non poteano difendere il Romano dalle violenze dei Franchi, senza l'intervenzione de' vescovi di sangue Romano, o di sangue barbarico; ma in vano si cercherebbe la vita e la possanza della curia Romana in questi vani simulacri." (Vol. i. part v. p. 133.) They might be, nevertheless, quite as important as under the later emperors.

It is not necessary to conclude that every city in which the curia or the defensor subsisted during the imperial government retained those institutions throughout the domination of the Franks. It appears that the functions of "defensor civitatis," that is to say, the protection of the city against arbitrary acts of the provincial governors, and the exercise of jurisdiction within its boundaries, frequently devolved upon the bishop. It is impossible not to recognize the efficacy of episcopal government in sustaining municipal rights during the first dynasty. The bishops were a link, or rather a shield, between the barbarians who respected them and the people whom they protected, and to whose race they for a long time commonly belonged. But the bishop was legally, and sometimes actually, elected, as the defensor had been, by the people at large. This, indeed, ceased to be the case before the reign of Charlemagne; and the crown, or (in the progress of the feudal system) its chief vassals, usurped the power of nomination, though the formality of election was not abolished. Certain it is that from this analogy to the defensor, and from the still closer analogy to the feudal vassal, after royal grants of jurisdiction and immunity became usual, not less than by the respect due to his station, the bishop became as much the civil governor of his city as the count was of the rural district.

This was a great revolution in the internal history of cities and one which generally led to the discontinuance of their popular institutions; so that after the reign of Charlemagne, if not earlier, we may perhaps consider a municipality choosing its own officers as an exception, though not a very unfrequent one, to the general usage. But instances of this are more commonly found to the south of the Loire, where Roman laws prevailed and the feudal spirit was less vigorous than in the northern provinces. Thus Raynouard has deduced the municipal government of ten cities from the fifth to the twelfth century. Seven of these are of the south—Perigueux, Bourges, Arles, Nismes, Marseilles, Toulouse, and Narbonne; three only of the north—Paris, Rheims, and Metz. (Vol. ii. p. 177.) It seems, however, more than probable that these were not the whole; even in the north Meaux and Châlons might be added, and, what in early times was undoubtedly to be reckoned a Frank city, Cologne. The corporate character of many of these is displayed by their coins. "Civitas Massiliensis," or "Narbonensis," will be found on the reverse of pieces bearing the heads of the French kings of the three dynasties, especially under Louis the Debonair and Charles

the Bald (p. 152). But it seems to me that the evidence of a popular assembly or *curia*, even in Rheims, which has always been wont to boast peculiarly of the antiquity of her privileges, is weak comparatively with what M. Raynouard has alleged for the cities of Provence. As to Paris, it is absolutely none at all. This assembly appears to have hardly survived in the north of France, and to have been replaced by *scabini*. These were originally chosen by the citizens, but gradually on the bishop's nomination. Those of Rheims appear in 847, exercising their functions under an officer of the archbishop. (Archives Administratifs de la Ville de Rheims, Préface, p. 7, in Documens Inédits, 1839.) The editor, however, (M. Varin), inclines to adopt the theory of a Roman origin for the privileges of that city. The citizens called themselves in 991, addressing the archbishop, "cives tui;" whence M. Varin infers that they took an oath of allegiance to that prelate, and that their claims to a prescriptive independence must be given up. (Vol. i. p. 156.) Such independence, (that is, of all but the sovereign) can at most only be admitted as to the great cities of Provence and Languedoc, which in the twelfth and thirteenth centuries entered into treaties with foreign powers, and conducted themselves as independent republics, though perhaps under the nominal superiority of the counts. Emulous, as it appears, of Italian liberty, they adopted the government by consuls, elected by the community. And this honorable title was given to the chief magistrates in most cities south of the Loire, though a different system, as we shall see, prevailed on the other bank.

The Benedictine historians of Languedoc are of opinion that the city of Nismes had municipal magistrates in the middle of the tenth century (t. ii. p. 111). The burgesses of Carcassonne appear by name in a charter of 1107 (p. 515). In one of 1131 the consuls, of Beziers are mentioned; they existed therefore previously (p. 409, and Appendix, p. 959). The magistrates of St. Antonin en Rouergue are named in 1136; those of Montpellier in 1142; of Narbonne in 1148; and of St. Gilles in 1149 (pp. 515, 432, 442, 464). The capitouls of Toulouse pretend to an extravagant antiquity; but were in fact established by Alfonso, Count of Toulouse, who died in 1148. In 1152 Raymond V. confirmed the regulations made by the common council of Toulouse, which became the foundation of the customs of that city (p. 472).

If we may trust altogether to the Assises de Jérusalem in their present shape, the court of burgesses, having jurisdiction over persons of that rank, was instituted by Godfrey of Bouillon, who died in 1100. (Ass. de Jérus. c. 2.) This would be even earlier than the charter of London, granted by Henry I. Lord Lyttelton goes so far as to call it "certain that in England many cities and towns were bodies corporate and communities long before the alteration introduced into France by the charters of Louis le Gros." (Hist. of Henry II. vol. iv. p. 29.) But this position, as I shall more particularly show in another place, is not borne out by any good authority, if it extends to any internal jurisdiction and management of their own police; whereof, except in the instance of London, we have no proof before the reign of Henry II.

The legal incorporation of communities was perhaps earlier in Spain than in any other country. Alfonso V. in 1020 granted a charter to Leon, which is said to mention the common council of that city in terms that show it to be an established institution. During the latter part of the eleventh century, as well as in subsequent times, such charters are very frequent. (Marina, Ensayo Historico-Critico sobre las sieta partidas.) In several instances we find concessions of smaller privileges to towns, without any political power. Thus Berenger, Count of Barcelona, in 1025, confirms to the inhabitants of that city all the franchises which they already possess. These seem, however, to be confined to exemption from paying rent and from any jurisdiction below that of an

officer deputed by the count. (De Marca, Marca Hispanica, p. 1038.) Another grant occurs in the same volume (p. 909), from the bishop of Barcelona in favor of a town of his diocese. By some inattention Robertson has quoted these charters as granted to "two villages in the county of Rousillon." (Hist. Charles V. note 16.) The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction (p. 1303).

The corporate towns in France and England always enjoyed fuller privileges than these Catalonian charters impart. The essential characteristics of a commune, according to M. Bréquigny, were an association confirmed by charter; a code of fixed sanctioned customs; and a set of privileges, always including municipal or elective government. (Ordonnances, p. 3.) A distinction ought, however, to be pointed out, which is rather liable to elude observation, between communes, or corporate towns, and boroughs (bourgeoisies). The main difference was that in the latter there was no elective government, the magistrates being appointed by the king or other superior. In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages, there was no distinction between corporate towns and mere boroughs: and indeed it is agreed that every corporate town was a borough, though every borough was not a corporation.*f* The French antiquary quoted above does not trace these inferior communities or boroughs higher than the charters of Louis VI. But we find the name and a good deal of the substance, in England under William the Conqueror, as is manifest from Domesday-Book.

It is evident that if extensive privileges of internal government had been preserved in the north of France, there could have been no need for that great movement towards the close of the eleventh century, which ended in establishing civic freedom; much less could the contemporary historians have spoken of this as a new era in the state of France. The bishops were now almost sovereign in their cities; the episcopal, the municipal, the feudal titles, conspired to enhance their power; and from being the protectors of the people, from the glorious office of *defensores civitatis*, they had, in many places at least, become odious by their own exactions. Hence the citizens of Cambray first revolted against their bishop in 957, and, after several ineffectual risings, ultimately constituted themselves into a community in 1076. The citizens of Mans, about the latter time, had the courage to resist William, Duke of Normandy; but this generous attempt at freedom was premature. The cities of Noyon, Beauvais, and St. Quentin, about the beginning of the next century, were successful in obtaining charters of immunity and self-government from their bishops; and where these were violated, on one side or the other, the king, Louis VI., came in to redress the injured party or to compose the dissensions of both. Hence arose the royal charters of the Picard cities, which soon extended to other parts of France, and were used as examples by the vassals of the crown. This subject, and especially the struggles of the cities against the bishops before the legal establishment of communities by charter, is abundantly discussed by M. Thierry, in his Lettres sur l'Histoire de France. But even where charters are extant, they do not always create an incorporated community, but, as at Laon, recognize and regulate an internal society already established. (Guizot, Civilisation en France, Leçon 47.)

We must here distinguish the cities of Flanders and Holland, which obtained their independence much earlier; in fact, their self-govern-

f The preface to the twelfth volume of Ordonnances des Rois contains a full account of *bourgeoisies*, as that to the eleventh does of *communes*. A great part of it, however, is applicable to both species, or rather to the genus and the species. See, too, that to the fourteenth volume of Recueil des Historiens, p. 74.

ment goes back beyond any assignable date. (Sismondi, iv. 432.) They appear to have sprung from a distinct source, but still from the great reservoir of Roman institutions. The cities on the Rhine retained more of their ancient organization than we find in northern France. The Roman language, says Thierry, had here perished; the institutions survived. At Cologne we find from age to age a corporation of citizens exactly resembling the *curia*, and whose members set up hereditary pretensions to a Roman descent; we find there a particular tribunal for the "cessio bonorum," a part of Roman law unknown to the old jurisprudence of Germany as much as to that of the feudal system. In the twelfth century the free constitution of Cologne passed for ancient. From Cologne and Trèves municipal rights spread to the Rhenish cities of less remote origin, and reached the great communities of Flanders and Brabant. Thierry has quoted a remarkable passage from the life of the Empress St. Adelaide, who died in 999, whence we may infer the continuance, at least in common estimation, of Roman privileges in the Rhenish cities. "Ante duodecimum circiter annum obitûs sui, in loco qui diciter Salsa (Seltz in Alsace), urbem decrevit fieri *sub libertate Romanâ*, quem affectum postea ad perfectum perducit effectum." (Récits des T. M. i. 274.)

But the acuteness of this writer has discovered a wholly different origin for the communes in the north of France. He deduces them from the old Teutonic institution of guilds, or fraternities by voluntary compact, to relieve each other in poverty, or to protect each other from injury. Two essential characteristics belonged to them; the common banquet and the common purse. They had also in many instances a religious, sometimes secret, ceremonial to knit more firmly the bond of fidelity. They became, as usual, suspicious to governments, as several capitularies of Charlemagne prove. But they spoke both to the heart and to the reason in a voice which no government could silence. They readily became connected with the exercise of trades, with the training of apprentices, with the traditional rules of art. We find them in all Teutonic and Scandinavian countries; they are frequently mentioned in our Anglo-Saxon documents, and are the basis of those corporations which the Norman kings recognized or founded. The guild was, of course, in its primary character a personal association; it was in the state, but not the state; it belonged to the city without embracing all the citizens; its purposes were the good of the fellows alone. But when their good was inseparable from that of their little country, their walls and churches, the principle of voluntary association was readily extended; and from the private guild, possessing already the vital spirit of faithfulness and brotherly love, sprung the sworn community, the body of citizens, bound by a voluntary but perpetual obligation to guard each other's rights against the thefts of the weak or the tyranny of the powerful.

The most remarkable proof of this progress from a merchant guild to a corporation is exhibited in the local history of Paris. No mention of a *curia* or Roman municipality in that city has been traced in any record: we are driven to Raynouard's argument—Could Paris be destitute of institutions which had become the right of all other cities in Gaul? A couple of lines, however, from the poem of Gulielmus Brito, under Philip Augustus, are his only proof (vol. ii. p. 219). But at Paris there was a great college or corporation of *nautæ* or *marchands d'eau;* that is, who supplied the town with commodities by the navigation of the Seine.[g] These, indeed, do not seem to be traced very far back, but the necessary documents may be deficient. They appear

[g] If an inscription quoted by the editors of Du Cange, voc. Nautæ, be genuine, the Nautæ Parisiaci existed as a corporate institution under Tiberius. But this must *primâ facie* be suspicious in no trifling degree.

abundantly in the twelfth century, with a provost and *scabini* of their own. And to this body the kings in that age conceded certain rights over the inhabitants. The arms borne by the city, a ship, are those of the college of *nautæ*. The subsequent process by which this corporation slid into a municipality is not clearly developed by the writer to whom I must refer.

Thus there were several sources of the municipal institutions in France; first, the Roman system of decurions, handed down prescriptively in some cities, but chiefly in the south; secondly, the German system of voluntary societies or guilds, spreading to the whole community for a common end; thirdly, the forcible insurrection of the inhabitants against their lords or prelates; and lastly, the charters, regularly granted by the king or by their immediate superior. Few are likely now to maintain the old theory of Robertson, that the kings of France encouraged the communities, in order to make head with their help against the nobility, which a closer attention to history refutes. We must here, however, distinguish the corporate towns or communities from the other class, called burgages, *bourgeoisies*. The châtelains encouraged the growth of villages around their castles, from whom they often derived assistance in war, and conceded to these burgesses some privileges, though not any municipal independence.

Guizot observes, as a difference between the curial system of the empire and that of the French communes in the twelfth century, that the former was aristocratic in its spirit; the decurions filled up vacancies in their body, and ultimately their privileges became hereditary. But the latter were grounded on popular election, though with certain modifications as to eligibility. Yet some of the aristocratic elements continued among the communes of the south. (Leçon 48.)

It is to be confessed that while the kings, from the end of the thirteenth century, altered so much their former policy as to restrain, in great measure, and even in some instances to overthrow, the liberties of French cities, there was too much pretext for this in their lawless spirit and proneness to injustice. The better class, dreading the populace, gave aid to the royal authority, by admitting bailiffs and provosts of the crown to exercise jurisdiction within their walls. But by this the privileges of the city were gradually subverted. (Guizot, Leçon 49; Thierry, Lettre xiv.) The ancient registers of the parliament of Paris, called Olim, prove this continual interference of the crown to establish peace and order in towns, and to check their encroachments on the rights of others. "Nulle part," says M. Beugnot, "on ne voit aussi bien que les communes étaient un instrument puissant pour opérer dans l'état de grands et d'heureux changemens, mais non une institution qui eut en elle-même des conditions de durée." (Régistres des Arrêts, vol. i. p. 192, in Documens Inédits, 1839.)

A more favorable period for civic liberty commenced and possibly terminated with the most tyrannical of French kings, Louis XI. Though the spirit of rebellion, which actuated a large part of the nobles in his reign, was not strictly feudal, but sprung much more from the combination of a few princes, it equally put the crown in jeopardy, and required all his sagacity to withstand its encroachments. He encouraged, therefore, with a policy unusual in the house of Valois, the Tiers Etat, the middle orders, as a counterpoise. What has erroneously been said of Louis VI. is true of his subtle descendant. "His ordinances," it is remarked by Sismondi (xiv. 314), "are distinguished by liberal views in government. He not only gave the citizens, in several places, the choice of their magistrates, but established an urban militia, training the inhabitants to the use of arms, and placing in their hands the appointment of officers." And thus, at the close of our mediæval period, we leave the municipal authority of France in no slight vigor. It may

only be added that, for miscellaneous information as to the French communes, the reader should have recourse to that great repository of curious knowledge, the "Histoire des Français, par Monteil, Siècle XV."

The continuance of Italian municipalities has been more disputed of late than that of the French, which both Savigny and Raynouard have placed beyond question. The former of these writers maintains that not only under the Ostrogoths and Greeks (the latter indeed might naturally be expected) we have abundant testimony to the *ordo decurionum* and other Roman institutions in the Italian cities, but that, even under the Lombard dominion, the same privileges were unimpaired, or at least not subverted. This is naturally connnected with the general question as to the condition of the natives in that period; those who deny them any rights of citizenship, or even protection by the law, will not be inclined to favor the supposition of an internal jurisdiction. Troja accordingly, following older writers, rejects the notion of civic government in those cities which endured the Lombard yoke, and elaborately refutes the proofs alleged by Savigny. In this, however, he does not seem always successful; but the early records of Italian communities are by no means so decisive as those that we have found in France.

Liutprand, as Troja conceives, established communities of Lombards alone. But he suggests that even before the reign of Liutprand there may have been such a district government as we find mentioned by Tacitus among the Germans; and this might possibly be denominated by the Lombards *curia* or *ordo*, in imitation of the Roman names. If, therefore, we meet with these terms in the laws or records of Italy before Charlemagne, there is no reason why they should not relate to Lombards (p. 125). This is hardly, perhaps, a conjecture that will be favored. Charlemagne, however, when he introduced the distinction of personal law, constituted in every city a new Lombard community, taking its name from the most numerous people, but in which each nation chose its own *scabini* or judges (p. 295).

BOOK III.

THE HISTORY OF ITALY.

THE CHARIOT RACE.

Photogravure from the original painting by Alexander Wagner.

BOOK III.

THE HISTORY OF ITALY, FROM THE EXTINCTION OF THE CARLOVINGIAN EMPERORS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

State of Italy after the Death of Charles the Fat—Coronation of Otho the Great—State of Rome—Conrad II.—Union of the Kingdom of Italy with the Empire—Establishment of the Normans in Naples and Sicily—Roger Guiscard—Rise of the Lombard Cities—They gradually become more independent of the Empire—Their internal Wars — Frederic Barbarossa — Destruction of Milan — Lombard League—Battle of Legnano—Peace of Constance—Temporal Principality of the Popes—Guelf and Ghibelin Factions—Otho IV.—Frederic II.—Arrangement of the Italian Republics—Second Lombard War—Extinction of the House of Swabia—Causes of the Success of Lombard Republics—Their Prosperity—and Forms of Government—Contentions between the Nobility and People—Civil Wars—Story of Giovanni di Vicenza.[a]

At the death of Charles the Fat in 888, that part of Italy which acknowledged the supremacy of the Western empire was divided, like France and Germany, among a few powerful vassals, hereditary governors of provinces. The principal of these were the dukes of Spoleto and Tuscany, the marquises of Ivrea, Susa, and Friuli. The great Lombard duchy of Bene-

a The authorities upon which this book is founded, and which do not always appear at the foot of the page, are chiefly the following. 1. Muratori's Annals of Italy (twelve volumes in 4to. or eighteen in 8vo.) comprehend a summary of its history from the beginning of the Christian era to the peace of Aix-la-Chapelle. The volumes relating to the middle ages, into which he has digested the original writers contained in his great collection, Scriptores Rerum Italicarum, are by much the best; and of these, the part which extends from the seventh or eighth to the end of the twelfth century is the fullest and most useful. Muratori's accuracy is in general almost implicitly to be trusted, and his plain integrity speaks in all his writings; but his mind was not philosophical enough to discriminate the wheat from the chaff, and his habits of life induced him to annex an imaginary importance to the dates of diplomas and other inconsiderable matters. His narrative presents a mere skeleton devoid of juices; and besides its intolerable aridity, it labors under that confusion which a merely chronological arrangement of concurrent and independent events must always produce. 2. The Dissertations on Italian Antiquities, by the same writer, may be considered either as one or two works. In Latin they form six volumes in folio, enriched with a great number of original docu-

vento, which had stood against the arms of Charlemagne, and comprised more than half the present kingdom of Naples, had now fallen into decay, and was straitened by the Greeks in Apulia, and by the principalities of Capua and Salerno, which had been severed from its own territory, on the opposite coast.*b* Though princes of the Carlovingian line continued to reign in France, their character was too little distinguished to challenge the obedience of Italy, already separated by family partitions from the Transalpine nations; and the only contest was among her native chiefs. One of these, Berenger, originally Marquis of Friuli, or the March of Treviso, reigned for thirty-six years, but with continually disputed pretensions; and after his death the calamities of Italy were sometimes aggravated

ments. In Italian they are freely translated by Muratori himself, abridged no doubt, and without most of the original instruments, but well furnished with quotations, and abundantly sufficient for most purposes. They form three volumes in quarto. I have in general quoted only the number of the dissertation, on account of the variance between the Latin and Italian works: in cases where the page is referred to, I have indicated by the title which of the two I intend to vouch. 3. St. Marc, a learned and laborious Frenchman, has written a chronological abridgment of Italian history, somewhat in the manner of Hénault, but so strangely divided by several parallel columns in every page, that I could hardly name a book more inconvenient to the reader. His knowledge, like Muratori's, lay a good deal in points of minute inquiry; and he is chiefly to be valued in ecclesiastical history. The work descends only to the thirteenth century. 4. Denina's Rivoluzioni d' Italia, originally published in 1769, is a perspicuous and lively book, in which the principal circumstances are well selected. It is not perhaps free from errors in fact, and still less from those of opinion: but, till lately, I do not know from what source a general acquaintance with the history of Italy could have been so easily derived. 5. The publication of M. Sismondi's Histoire des Républiques Italiennes has thrown a blaze of light around the most interesting, at least in many respects, of European countries during the middle ages. I am happy to bear witness, so far as my own studies have enabled me, to the learning and diligence of this writer; qualities which the world is sometimes apt not to suppose, where they perceive so much eloquence and philosophy. I cannot express my opinion of M. Sismondi in this respect more strongly than by saying that his work has almost superseded the Annals of Muratori; I mean from the twelfth century, before which period his labor hardly begins. Though doubtless not more accurate than Muratori, he has consulted a much more extensive list of authors; and, considered as a register of facts alone, his history is incomparably more useful. These are combined in so skilful a manner as to diminish, in a great degree, that inevitable confusion which arises from frequency of transition and want of general unity. It is much to be regretted that, from too redundant details of unnecessary circumstances, and sometimes, if I may take the liberty of saying so, from unnecessary reflections, M. Sismondi has run into a prolixity which will probably intimidate the languid students of our age. It is the more to be regretted, because the History of Italian Republics is calculated to produce a good far more important than storing the memory with historical facts, that of communicating to the reader's bosom some sparks of the dignified philosophy, the love for truth and virtue, which lives along its eloquent pages. 6. To Muratori's collection of original writers the Scriptores Rerum Italicarum, in twenty-four volumes in folio, I have paid considerable attention; perhaps there is no volume of it which I have not more or less consulted. But, after the Annals of the same writer, and the work of M. Sismondi, I have not thought myself bound to repeat a laborious search into all the authorities upon which those writers depend. The utility, for the most part, of perusing original and contemporary authors, consists less in ascertaining mere facts than in acquiring that insight into the spirit and temper of their times which it is utterly impracticable for any compiler to impart. It would be impossible for me to distinguish what information I have derived from these higher sources; in cases, therefore, where no particular authority is named, I would refer to the writings of Muratori and Sismondi, especially the latter, as the substratum of the following book.

b Giannone, Istoria Civile di Napoli, l. vii.; Sismondi, Hist. des Républiques Italiennes, t. i. p. 244.

by tyranny, and sometimes by intestine war.[c] The Hungarians desolated Lombardy; the southern coasts were infested by the Saracens, now masters of Sicily. Plunged in an abyss, from which she saw no other means of extricating herself, Italy lost sight of her favorite independence, and called in the assistance of Otho the First, King of Germany. Little opposition was made to this powerful monarch. Berenger II., the reigning sovereign of Italy, submitted to hold the kingdom of him as a fief.[d] But some years afterwards, new disturbances arising, Otho descended from the Alps a second time, deposed Berenger, and received at the hands of Pope John XII. the imperial dignity [A.D. 951], which had been suspended for nearly forty years.

Every ancient prejudice, every recollection, whether of Augustus or of Charlemagne, had led the Italians to annex the notion of sovereignty to the name of Roman Emperor; nor were Otho, or his two immediate descendants, by any means inclined to waive these supposed prerogatives, which they were well able to enforce. Most of the Lombard princes acquiesced without apparent repugnance in the new German government, which was conducted by Otho the Great with much prudence and vigor, and occasionally with severity. The citizens of Lombardy were still better satisfied with a change that ensured a more tranquil and regular administration than they had experienced under the preceding kings. But in one, and that the chief of Italian cities, very different sentiments were prevalent. We find, indeed, a considerable obscurity spread over the internal history of Rome during the long period from the recovery of Italy by Belisarius to the end of the eleventh century. The popes appear to have possessed some measure of temporal power, even while the city was professedly governed by the exarchs of Ravenna, in the name of the Eastern empire. This power became more extensive after her separation from Con-

c Berenger, being grandson, by a daughter, of Louis the Debonair, may be reckoned of the Carlovingian family. He was a Frank by law, according to Troja, who denies to him and his son, Berenger II., the name of Italians. It was Otho I. that put an end to the Frank dominion. Storia d' Italia, v. 357. "Or già tutto all' apparir degli Ottoni si cangia da capo in Italia, nel modo stesso che tutto erasi cangiato alla venuta de' Franchi. Le città Longobarde prendono altra faccia, la possanza de' vescovi s' aumenta, i patti fra il sacerdozio e l' imperio guardano a più vasto scopo ed i pontifici Romano sono dalla forza delle cose chiamati a tenere il freno intellettuale della cività de' popoli di tutta Europa." Troja deduces the Italian communes "dopo il mille" from a German rather than a Roman origin. "Là sono veramente i comuni dov' è la spada per difendergli; ma nel regno Longobardice da lunga stagione la spada più non pendeva dal fianco del Romano." (p. 368.)

d Muratori, A.D. 951; Denina, Rivoluzioni d' Italia, l. ix. c. 6.

stantinople. It was, however, subordinate to the undeniable sovereignty of the new imperial family, who were supposed to enter upon all the rights of their predecessors. There was always an imperial officer, or prefect, in that city, to render criminal justice; an oath of allegiance to the emperor was taken by the people; and upon any irregular election of a pope, a circumstance by no means unusual, the emperors held themselves entitled to interpose. But the spirit and even the institutions of the Romans were republican. Amidst the darkness of the tenth century, which no contemporary historian dissipates, we faintly distinguish the awful names of senate, consuls, and tribunes, the domestic magistracy of Rome. These shadows of past glory strike us at first with surprise; yet there is no improbability in the supposition that a city so renowned and populous, and so happily sheltered from the usurpation of the Lombards, might have preserved, or might afterwards establish, a kind of municipal government, which it would be natural to dignify with those august titles of antiquity.*e* During that anarchy which ensued upon the fall of the Carlovingian dynasty, the Romans acquired an independence which they did not deserve. The city became a prey to the most terrible disorders; the papal chair was sought for at best by bribery or controlling influence, often by violence and assassination; it was filled by such men as naturally rise by such means, whose sway was precarious, and generally ended either in their murder or degradation. For many years the supreme pontiffs were forced upon the church by two women of high rank but infamous reputation, Theodora and her daughter Marozia. The kings of Italy, whose election in a diet of Lombard princes and bishops at Roncaglia was not conceived to convey any pretensions to the sovereignty of Rome, could never obtain any decided influence in papal elections, which were the object of struggling factions among the resident nobility. In this temper of the Romans, they were ill disposed to resume habits of obedience to a foreign sovereign. The next year after Otho's coronation they rebelled, the pope at their head; but were of course subdued without difficulty. [A.D. 962.] The same republican spirit broke out whenever the emperors were absent in Germany, especially during the minority of Otho III., and directed itself against the temporal superiority of the pope.

e Muratori, A.D. 967, 987, 1015, 1087; Sismondi, t. i. p. 155.

But when that emperor attained manhood he besieged and took the city, crushing all resistance by measures of severity; and especially by the execution of the consul Crescentius, a leader of the popular faction, to whose instigation the tumultuous license of Rome was principally ascribed.*f*

At the death of Otho III. without children, in 1002, the compact between Italy and the emperors of the house of Saxony was determined. Her engagement of fidelity was certainly not applicable to every sovereign whom the princes of Germany might raise to their throne. Accordingly Ardoin Marquis of Ivrea was elected King of Italy. But a German party existed among the Lombard princes and bishops, to which his insolent demeanor soon gave a pretext for inviting Henry II., the new king of Germany, collaterally related to their late sovereign. Ardoin was deserted by most of the Italians, but retained his former subjects in Piedmont, and disputed the crown for many years with Henry, who passed very little time in Italy. During this period there was hardly any recognized government; and the Lombards became more and more accustomed, through necessity, to protect themselves, and to provide for their own internal police. Meanwhile the German nation had become odious to the Italians. The rude soldiery, insolent and addicted to intoxication, were engaged in frequent disputes with the citizens, wherein the latter, as is usual in similar cases, were exposed first to the summary vengeance of the troops, and afterwards to penal chastisement for sedition.*g* In one of these tumults, at the entry of Henry II. in 1004, the city of Pavia was burned to the ground, which inspired its inhabitants with a constant animosity against that emperor. Upon his death in 1024, the Italians were disposed to break once more their connection with Germany, which had elected as sovereign Conrad Duke of Franconia. They offered their crown to Robert King of France, and to William Duke of Guienne; but neither of them was imprudent enough to involve himself in the difficult and faithless politics of Italy. It may surprise us that no candidate appeared from among her native princes. But it had been the dexterous policy of the Othos to weaken the great Italian fiefs, which were still rather considered as hereditary

f Sismondi, t. i. p. 164, makes a patriot hero of Crescentius. But we know so little of the man or the times, that it seems better to follow the common tenor of history, without vouching for the accuracy of its representations.

g Muratori, A.D. 1027, 1037.

governments than as absolute patrimonies, by separating districts from their jurisdiction, under inferior marquises and rural counts.*h* The bishops were incapable of becoming competitors, and generally attached to the German party. The cities already possessed material influence, but were disunited by mutual jealousies. Since ancient prejudices, therefore, precluded a federate league of independent principalities and republics, for which perhaps the actual condition of Italy unfitted her, Eribert Archbishop of Milan, accompanied by some other chief men of Lombardy, repaired to Constance, and tendered the crown to Conrad, which he was already disposed to claim as a sort of dependency upon Germany. [A.D. 1024.] It does not appear that either Conrad or his successors were ever regularly elected to reign over Italy;*i* but whether this ceremony took place or not, we may certainly date from that time the subjection of Italy to the Germanic body. It became an unquestionable maxim, that the votes of a few German princes conferred a right to the sovereignty of a country which had never been conquered, and which had never formally recognized this superiority.*j* But it was an equally fundamental rule, that the elected King of Germany could not assume the title of Roman Emperor until his coronation by the pope. The middle appellation of King of the Romans was invented as a sort of approximation to the imperial dignity. But it was not till the reign of Maximilian that the actual coronation at Rome was dispensed with, and the title of emperor taken immediately after the election.

The period between Conrad of Franconia and Frederic Barbarossa, or from about the middle of the eleventh to that of the twelfth century, is marked by three great events in Italian history; the struggle between the empire and the papacy for ecclesiastical investitures, the establishment of the Norman

h Denina, l. ix. c. ii; Muratori, Antiquities. Ital. Dissert. 8; Annali d'Italia, A.D. 989.

i Muratori, A.D. 1026. It is said afterwards, p. 367, that he was a Romanis ad Imperatorem electus. The people of Rome therefore preserved their nominal right of concurring in the election of an emperor.

Muratori, in another place, A.D. 1040, supposes that Henry III. was chosen King of Italy, though he allows that no proof of it exists; and there seems no reason for the supposition.

j Gunther, the poet of Frederic Barbarossa, expresses this not inelegantly:

Romani gloria regni
Nos penes est; quemcunque sibi Germania regem
Præficit, hunc dives submisso vertice Roma [Rhenus
Accipit, et verso Tiberim regit ordine Gunther. Ligurinus ap. Struvium Corpus Hist. German. p. 266.

Yet it appears from Otho of Frisingen, an unquestionable authority, that some Italian nobles concurred, or at least were present and assisting, in the election of Frederic himself: l. ii. c. i.

kingdom in Naples, and the formation of distinct and nearly independent republics among the cities of Lombardy. The first of these will find a more appropriate place in a subsequent chapter, where I shall trace the progress of ecclesiastical power. But it produced a long and almost incessant state of disturbance in Italy; and should be mentioned at present as one of the main causes which excited in that country a systematic opposition to the imperial authority.

The southern provinces of Italy, in the beginning of the eleventh century, were chiefly subject to the Greek empire, which had latterly recovered part of its losses, and exhibited some ambition and enterprise, though without any intrinsic vigor. They were governed by a lieutenant, styled Catapan,[k] who resided at Bari in Apulia. On the Mediterranean coast three duchies, or rather republics of Naples, Gaeta, and Amalfi, had for several ages preserved their connection with the Greek empire, and acknowledged its nominal sovereignty. The Lombard principalities of Benevento, Salerno, and Capua had much declined from their ancient splendor. The Greeks were, however, not likely to attempt any further conquests: the court of Constantinople had relapsed into its usual indolence; nor had they much right to boast of successes rather due to the Saracen auxiliaries whom they hired from Sicily. No momentous revolution apparently threatened the south of Italy, and least of all could it be anticipated from what quarter the storm was about to gather.

The followers of Rollo, who rested from plunder and piracy in the quiet possession of Normandy, became devout professors of the Christian faith, and particularly addicted to the custom of pilgrimage, which gratified their curiosity and spirit of adventure. In small bodies, well armed on account of the lawless character of the countries through which they passed, the Norman pilgrims visited the shrines of Italy and even the Holy Land. Some of these, very early in the eleventh century, were engaged by a Lombard prince of Salerno against the Saracens, who had invaded his territory; and through that superiority of valor, and perhaps of corporal strength, which this singular people seem to have possessed above all other Europeans, they made surprising havoc among the enemy.[l] This exploit led

[k] Catapanus, from κατὰ πὰν one employed in general administration of affairs.

[l] Giannone, t. ii. p. 7 [edit. 1753]. I should observe that St. Marc, a more critical writer in examination of facts

to fresh engagements, and these engagements drew new adventurers from Normandy; they founded the little city of Aversa, near Capua, and were employed by the Greeks against the Saracens of Sicily. But, though performing splendid services in this war, they were ill repaid by their ungrateful employers; and being by no means of a temper to bear with injury, they revenged themselves by a sudden invasion of Apulia. [A.D. 1042.] This province was speedily subdued, and divided among twelve Norman counts; but soon afterwards Robert Guiscard, one of twelve brothers, many of whom were renowned in these Italian wars, acquired the sovereignty; and, adding Calabria to his conquests, put an end to the long dominion of the Eastern emperors in Italy.[m] [A.D. 1057.] He reduced the principalities of Salerno and Benevento, in the latter instance sharing the spoil with the pope, who took the city to himself, while Robert retained the territory. His conquests in Greece, which he invaded with the magnificent design of overthrowing the Eastern empire, were at least equally splendid, though less durable. [A.D. 1061.] Roger, his younger brother, undertook meanwhile the romantic enterprise, as it appeared, of conquering the island of Sicily with a small body of Norman volunteers. But the Saracens were broken into petty states, and discouraged by the bad success of their brethren in Spain and Sardinia. After many years of war Roger became sole master of Sicily, and took the title of Count. The son of this prince, upon the extinction of Robert Guiscard's posterity, united the two Norman sovereignties, and, subjugating the free republics of Naples and Amalfi, and the principality of Capua, established a boundary which has hardly been changed since his time.[n] [A.D. 1127.]

The first successes of these Norman leaders were viewed unfavorably by the popes. Leo IX. marched in person against Robert Guiscard with an army of German mercenaries, but was beaten and made prisoner in this unwise enterprise, the scandal of which nothing but good fortune could have light-

than Giannone, treats this first adventure of the Normans as unauthenticated. Abrégé Chronologique, p. 990.

m The final blow was given to the Greek domination over Italy by the capture of Bari in 1071, after a siege of four years. It had for some time been confined to this single city. Muratori, St. Marc.

n M. Sismondi has excelled himself in describing the conquest of Amalfi and Naples by Roger Guiscard (t. i. c. 4); warming his imagination with visions of liberty and virtue in those obscure republics, which no real history survives to dispel.

ened. He fell, however, into the hands of a devout people, who implored his absolution for the crime of defending themselves; and, whether through gratitude, or as the price of his liberation, invested them with their recent conquests in Apulia, as fiefs of the Holy See. This investiture was repeated and enlarged as the popes, especially in their contention with Henry IV. and Henry V., found the advantage of using the Normans as faithful auxiliaries. Finally, Innocent II., in 1139, conferred upon Roger the title of King of Sicily. It is difficult to understand by what pretence these countries could be claimed by the see of Rome in sovereignty, unless by virtue of the pretended donation of Constantine, or that of Louis the Debonair, which is hardly less suspicious;[o] and least of all how Innocent II. could surrender the liberties of the city of Naples, whether that was considered as an independent republic, or as a portion of the Greek empire. But the Normans, who had no title but their swords, were naturally glad to give an appearance of legitimacy to their conquest; and the kingdom of Naples, even in the hands of the most powerful princes in Europe, never ceased to pay a feudal acknowledgment to the chair of St. Peter.

The revolutions which time brought forth on the opposite side of Italy were still more interesting. Under the Lombard and French princes every city with its adjacent district was subject to the government and jurisdiction of a count, who was himself subordinate to the duke or marquis of the province. From these counties it was the practice of the first German emperors to dismember particular towns or tracts of country, granting them upon a feudal tenure to rural lords, by many of whom also the same title was assumed. Thus by degrees the authority of the original officers was confined almost to the walls of their own cities; and in many cases the bishops obtained a grant of the temporal government, and exercised the functions which had belonged to the count.[p]

It is impossible to ascertain the time at which the cities of Lombardy began to assume a republican form of government, or to trace with precision the gradations of their progress. The last historian of Italy asserts that Otho the First erected

[o] Muratori presumes to suppose that the interpolated, if not spurious, grants of Louis the Debonair, Otho I., and Henry II. to the see of Rome, were promulgated about the time of the first concessions to the Normans, in order to give the popes a colorable pretext to dispose of the southern provinces of Italy. A.D. 1059.

[p] Muratori, Antiquit, Italiæ, Dissert. 8; Annali d'Italia, A.D. 989; Antichita Estensi, p. 26.

them into municipal communities, and permitted the election of their magistrates; but of this he produces no evidence; and Muratori, from whose authority it is rash to depart without strong reasons, is not only silent about any charters, but discovers no express unequivocal testimonies of a popular government for the whole eleventh century.[q] The first appearance of the citizens acting for themselves is in a tumult at Milan in 991, when the archbishop was expelled from the city.[r] But this was a transitory ebullition, and we must descend lower for more specific proofs. It is possible that the disputed succession of Ardoin and Henry, at the beginning of the eleventh age, and the kind of interregnum which then took place, gave the inhabitants an opportunity of choosing magistrates and of sharing in public deliberations. A similar relaxation indeed of government in France had exposed the people to greater servitude, and established a feudal aristocracy. But the feudal tenures seem not to have produced in Italy that systematic and regular subordination which existed in France during the same period; nor were the mutual duties of the relation between lord and vassal so well understood or observed. Hence we find not only disputes, but actual civil war, between the lesser gentry or vavassors, and the higher nobility, their immediate superiors. These differences were adjusted by Conrad the Salic, who published a remarkable edict in 1037, by which the feudal law of Italy was reduced to more certainty.[s] From this disunion among the members of the feudal confederacy, it was more easy for the citizens to render themselves secure against its dominion. The cities too of Lombardy were far more populous and better defended than those of France; they had learned to stand sieges in the Hungarian invasions of the tenth century, and had acquired the right of protecting themselves by strong fortifications. Those which had been placed under the temporal government of their bishops had peculiar advantages in struggling for emancipation.[t] This circum-

[q] Sismondi, t. i. p. 97, 384; Muratori Dissert. 49.

[r] Muratori, Annali d'Italia.

[s] Muratori, Annali d'Italia. St. Marc.

[t] The bishops seem to have become counts, or temporal governors, of their sees, about the end of the tenth, or before the middle of the eleventh century. Muratori, Diss. 8; Denina, l. ix. c. 11; St. Marc, A.D. 1041, 1047, 1070. In Arnulf's History of Milan, written before the close of the latter age, we have a contemporary evidence. And from the perusal of that work I should infer that the archbishop was, in the middle of the eleventh century, the chief magistrate of the city. But, at the same time, it appears highly probable that an assembly of the citizens, or at least a part of the citizens, partook in the administration of public affairs. Muratori, Scriptores Rerum Italicarum, t. iv. p. 16, 22, 23, and particularly the last. In most cities to the eastward of the Tesino, the bish-

stance in the state of Lombardy I consider as highly important towards explaining the subsequent revolution. Notwithstanding several exceptions, a churchman was less likely to be bold and active in command than a soldier; and the sort of election which was always necessary, and sometimes more than nominal, on a vacancy of the see, kept up among the citizens a notion that the authority of their bishop and chief magistrate emanated in some degree from themselves. In many instances, especially in the church of Milan, the earliest perhaps, and certainly the most famous of Lombard republics, there occurred a disputed election; two, or even three, competitors claimed the archiepiscopal functions, and were compelled, in the absence of the emperors, to obtain the exercise of them by means of their own faction among the citizens.[u]

These were the general causes which, operating at various times during the eleventh century, seem gradually to have produced a republican form of government in the Italian cities. But this part of history is very obscure. The archives of all cities before the reign of Frederic Barbarossa have perished. For many years there is a great deficiency of contemporary Lombard historians; and those of a later age, who endeavored to search into the antiquities of their country, have found only some barren and insulated events to record. We perceive, however, throughout the eleventh century, that the cities were continually in warfare with each other. This, indeed, was according to the manners of that age, and no inference can absolutely be drawn from it as to their internal freedom. But it is observable that their chronicles speak, in recording these transactions, of the people, and not of their leaders, which is the true republican tone of history. Thus, in the Annals of

ops lost their temporal authority in the twelfth century, though the archbishop of Milan had no small prerogatives while that city was governed as a republic. But in Piedmont they continued longer in the enjoyment of power. Vercelli, and even Turin, were almost subject to their respective prelates till the thirteenth century. For this reason, among others, the Piedmontese cities are hardly to be reckoned among the republics of Lombardy.—Denina, Istoria dell' Italia Occidentale, t. i. p. 191.

[u] Muratori, A.D. 1345. Sometimes the inhabitants of a city refused to acknowledge a bishop named by the emperor, as happened at Pavia and Asti about 1057. Arnulf, p. 22. This was, in other words, setting up themselves as republics. But the most remarkable instance of this kind occurred in 1070, when the Milanese absolutely rejected Godfrey, appointed by Henry IV., and, after a resistance of several years, obliged the emperor to fix upon another person. The city had been previously involved in long and violent tumults, which, though rather belonging to ecclesiastical than civil history, as they arose out of the endeavors made to reform the conduct and enforce the celibacy of the clergy, had a considerable tendency to diminish the archbishop's authority, and to give a republican character to the inhabitants. These proceedings are told at great length by St. Marc, t. iii. A.D. 1056-1077. Arnulf and Landulf are the original sources.

Pisa, we read, under the years 1002 and 1004, of victories gained by the Pisans over the people of Lucca; in 1006, that the Pisans and Genoese conquered Sardinia.[v] These annals, indeed, are not by a contemporary writer, nor perhaps of much authority. But we have an original account of a war that broke out in 1057, between Pavia and Milan, in which the citizens are said to have raised armies, made alliances, hired foreign troops, and in every respect acted like independent states.[w] There was, in fact, no power left in the empire to control them. The two Henrys IV. and V. were so much embarrassed during the quarrel concerning investitures, and the continual troubles of Germany, that they were less likely to interfere with the rising freedom of the Italian cities, than to purchase their assistance by large concessions. Henry IV. granted a charter to Pisa in 1081, full of the most important privileges, promising even not to name any marquis of Tuscany without the people's consent;[x] and it is possible that, although the instruments have perished, other places might obtain similar advantages. However this may be, it is certain that before the death of Henry V., in 1125, almost all the cities of Lombardy, and many among those of Tuscany, were accustomed to elect their own magistrates, and to act as independent communities in waging war and in domestic government.[y]

The territory subjected originally to the count or bishop of these cities, had been reduced, as I mentioned above, by numerous concessions to the rural nobility. But the new republics, deeming themselves entitled to all which their former governors had once possessed, began to attack their nearest neighbors, and to recover the sovereignty of all their ancient territory. They besieged the castles of the rural counts, and successively reduced them into subjection. They suppressed some minor communities, which had been formed in imitation of themselves by little towns belonging to their district. Sometimes they purchased feudal superiorities or territorial jurisdictions, and, according to a policy not unusual

v Murat. Diss. 45. Arnulfus, the historian of Milan, makes no mention of any temporal counts, which seems to be a proof that there were none in any authority. He speaks always of Mediolanenses, Papienses, Ravenates, &c. This history was written about 1085, but relates to the earlier part of that century. That of Landulphus corroborates this supposition, which indeed is capable of proof as to Milan and several other cities in which the temporal government had been legally vested in the bishops.

w Ibid.; Arnulf Hist. Mediolan. p. 22.

x Murat. Dissert. 45.

y Murat. Annali d'Ital. A.D. 1107.

with the stronger party, converted the rights of property into those of government.[z] Hence, at the middle of the twelfth century, we are assured by a contemporary writer that hardly any nobleman could be found, except the Marquis of Montferrat, who had not submitted to some city.[a] We may except, also, I should presume, the families of Este and Malaspina, as well as that of Savoy. Muratori produces many charters of mutual compact between the nobles and the neighboring cities; whereof one invariable article is, that the former should reside within the walls a certain number of months in the year.[b] The rural nobility, thus deprived of the independence which had endeared their castles, imbibed a new ambition of directing the municipal government of the cities, which consequently, during this period of the republics, fell chiefly into the hands of the superior families. It was the sagacious policy of the Lombards to invite settlers by throwing open to them the privileges of citizenship, and sometimes they even bestowed them by compulsion. Sometimes a city, imitating the wisdom of ancient Rome, granted these privileges to all the inhabitants of another.[c] Thus, the principal cities, and especially Milan, reached, before the middle of the twelfth century, a degree of population very far beyond that of the capitals of the great kingdoms. Within their strong walls and deep trenches, and in the midst of their well-peopled streets, the industrious dwelt secure from the license of armed pillagers and the oppression of feudal tyrants. Artisans, whom the military landholders contemned, acquired and deserved the right of bearing arms for their own and the public defense.[d] Their occupations became liberal, because they were the foundation of their political franchises; the citizens were classed in companies according to their respective crafts, each of which had its tribune or standard bearer (gonfalonier), at whose command, when any tumult arose or enemy threatened, they rushed in arms to muster in the market-place.

z Il dominio utile delle città e de' villaggi era talvolta diviso fra due o più padroni, ossia che s' assegnassero a ciascuno diversi quartieri, o si dividessoro i proventi della gabelle, ovvero che l'uno signore godesse d'una spezie della giurisdizione, e l' altro d' un' altra. Denina l xii. c. 3. This produced a vast intricacy of titles, which was of course advantageous to those who wanted a pretext for robbing their neighbors.

a Otho Frisingens. l. ii. c. 13.

b Murat. Diss. 49.

c Ibid.

d Otho Frisingensis ap. Murat. Scr. Rer. Ital. t. vi. p. 708. Ut etiam ad comprimendos vicinos materiâ non careant, inferioris ordinis juvenes, vel quoslibet contemptibilium etiam mechanicarum artium opifices, quos cæteræ gentes ab honestioribus et liberioribus studiis tanquam pestem propellunt, ad militiæ cingulum, vel dignitatum gradus assumere non dedignantur. Ex quo factum est, ut cæteris orbis civitatibus, divitiis et potentiâ præemineant.

But, unhappily, we cannot extend the sympathy which institutions so full of liberty create to the national conduct of these little republics. Their love of freedom was alloyed by that restless spirit, from which a democracy is seldom exempt, of tyrannizing over weaker neighbors. They played over again the tragedy of ancient Greece, with all its circumstances of inveterate hatred, unjust ambition, and atrocious retaliation, though with less consummate actors upon the scene. Among all the Lombard cities, Milan was the most conspicuous, as well for power and population as for the abuse of those resources by arbitrary and ambitious conduct. Thus, in 1111, they razed the town of Lodi to the ground, distributing the inhabitants among six villages, and subjecting them to an unrelenting despotism.[e] Thus, in 1118, they commenced a war of ten years' duration with the little city of Como; but the surprising perseverance of its inhabitants procured for them better terms of capitulation, though they lost their original independence. The Cremonese treated so harshly the town of Crema that it revolted from them, and put itself under the protection of Milan. Cities of more equal forces carried on interminable hostilities by wasting each other's territory, destroying the harvests, and burning the villages.

The sovereignty of the emperors, meanwhile, though not very effective, was in theory always admitted. Their name was used in public acts, and appeared upon the coin. When they came into Italy they had certain customary supplies of provisions, called fodrum regale, at the expense of the city where they resided; during their presence all inferior magistracies were suspended, and the rights of jurisdiction devolved upon them alone. But such was the jealousy of the Lombards, that they built the royal palaces outside their gates; a precaution to which the emperors were compelled to submit. This was at a very early time a subject of contention between the inhabitants of Pavia and Conrad II., whose palace, seated in the heart of the city, they had demolished in a sedition, and were unwilling to rebuild in that situation.[f]

[e] The animosity between Milan and Lodi was of very old standing. It originated, according to Arnulf, in the resistance made by the inhabitants of the latter city to an attempt made by Archbishop Eribert to force a bishop of his own nomination upon them. The bloodshed, plunder, and conflagrations which had ensued, would, he says, fill a volume, if they were related at length. Scriptores Rerum Italic. t. iv. p. 16. And this is the testimony of a writer who did not live beyond 1085. Seventy years more either of hostility or servitude elapsed before Lodi was permitted to respire.

[f] Otho Frisingens. p. 710; Muratori, A.D. 1027.

Such was the condition of Italy when Frederic Barbarossa, Duke of Suabia, and nephew of the last emperor, Conrad III., ascended the throne of Germany. [1152.] His accession forms the commencement of a new period, the duration of which is about one hundred years, and which is terminated by the death of Conrad IV., the last emperor of the house of Suabia. It is characterized, like the former, by three distinguishing features in Italian history; the victorious struggle of the Lombard and other cities for independence, the final establishment of a temporal sovereignty over the middle provinces by the popes, and the union of the kingdom of Naples to the dominions of the house of Suabia.

In Frederic Barbarossa the Italians found a very different sovereign from the two last emperors, Lothaire and Conrad III., who had seldom appeared in Italy, and with forces quite inadequate to control such insubordinate subjects. The distinguished valor and ability of this prince rendered a severe and arbitrary temper and a haughty conceit of his imperial rights more formidable. He believed, or professed to believe, the magnificent absurdity, that, as successor of Augustus, he inherited the kingdoms of the world. In the same right, he more powerfully, if not more rationally, laid claim to the entire prerogatives of the Roman emperors over their own subjects; and in this the professors of the civil law, which was now diligently studied, lent him their aid with the utmost servility. To such a disposition the self-government of the Lombard cities appeared mere rebellion. Milan especially, the most renowned of them all, drew down upon herself his inveterate resentment. He found, unfortunately, too good a pretense in her behavior towards Lodi. Two natives of that ruined city threw themselves at the emperor's feet, imploring him, as the ultimate source of justice, to redress the wrongs of their country. It is a striking proof of the terror inspired by Milan that the consuls of Lodi disavowed the complaints of their countrymen, and the inhabitants trembled at the danger of provoking a summary vengeance, against which the imperial arms seemed no protection.*g* The Milanese, however, abstained from attacking the people of Lodi, though they treated with contempt

g See an interesting account of these circumstances in the narrative of Otho Morena, a citizen of Lodi. Script. Rer. Ital. t. vi. p. 966. M. Sismondi, who reproaches Morena for partiality towards Frederic in the Milanese war, should have remembered the provocations of Lodi. Hist. des Répub. Ital. t. ii. p. 102.

the emperor's order to leave them at liberty. Frederic meanwhile came into Italy, and held a diet at Roncaglia, where complaints poured in from many quarters against the Milanese. Pavia and Cremona, their ancient enemies, were impatient to renew hostilities under the imperial auspices. Brescia, Tortona, and Crema were allies, or rather dependents, of Milan. Frederic soon took occasion to attack the latter confederacy. Tortona was compelled to surrender and levelled to the ground. But a feudal army was soon dissolved; the emperor had much to demand his attention at Rome, where he was on ill terms with Adrian IV.; and when the imperial troops were withdrawn from Lombardy, the Milanese rebuilt Tortona, and expelled the citizens of Lodi from their dwellings. Frederic assembled a fresh army, to which almost every city of Lombardy, willingly or by force, contributed its militia. It is said to have exceeded a hundred thousand men. The Milanese shut themselves up within their walls; and perhaps might have defied the imperial forces, if their immense population, which gave them confidence in arms, had not exposed them to a different enemy. Milan was obliged by hunger to capitulate, upon conditions not very severe, if a vanquished people could ever safely rely upon the convention that testifies their submission.

Frederic, after the surrender of Milan, held a diet at Roncaglia, where the effect of his victories was fatally perceived. [A.D. 1158.] The bishops, the higher nobility, the lawyers, vied with one another in exalting his prerogatives. He defined the regalian rights, as they were called, in such a manner as to exclude the cities and private proprietors from coining money, and from tolls or territorial dues, which they had for many years possessed. These, however, he permitted them to retain for a pecuniary stipulation. A more important innovation was the appointment of magistrates, with the title of podestà, to administer justice concurrently with the consuls; but he soon proceeded to abolish the latter office in many cities, and to throw the whole government into the hands of his own magistrates. He prohibited the cities from levying war against each other. It may be presumed that he showed no favor to Milan. The capitulation was set at naught in its most express provisions; a podestà was sent to supersede the consuls and part of the territory taken away. Whatever might be the risk of resistance, and the Milanese had experience enough not

to undervalue it, they were determined rather to see their liberties at once overthrown than gradually destroyed by a faithless tyrant. They availed themselves of the absence of his army to renew the war. Its issue was more calamitous than that of the last. Almost all Lombardy lay patient under subjection. The small town of Crema, always the faithful ally of Milan, stood a memorable siege against the imperial army; but the inhabitants were ultimately compelled to capitulate for their lives, and the vindictive Cremonese razed their dwellings to the ground.*h* But all smaller calamities were forgotten when the great city of Milan, worn out by famine rather than subdued by force, was reduced to surrender at discretion. Lombardy stood in anxious suspense to know the determination of Frederic respecting this ancient metropolis, the seat of the early Christian emperors, and second only to Rome in the hierarchy of the Latin church. A delay of three weeks excited fallacious hopes; but at the end of that time an order was given to the Milanese to evacuate their habitations. The deserted streets were instantly occupied by the imperial army; the people of Pavia and Cremona, of Lodi and Como, were commissioned to revenge themselves on the respective quarters of the city assigned to them; and in a few days the pillaged churches stood alone amidst the ruins of what had been Milan.

There was now little left of that freedom to which Lombardy had aspired: it was gone like a pleasant dream, and she awoke to the fears and miseries of servitude. [A.D. 1162.] Frederic obeyed the dictates of his vindictive temper, and of the policy usual among statesmen. He abrogated the consular regimen in some even of the cities which had supported him, and established his podestà in their place. This magistrate was always a stranger, frequently not even an Italian; and he came to his office with all those prejudices against the people he was to govern which cut off every hope of justice and humanity. The citizens of Lombardy, especially the Milanese, who had been dispersed in the villages adjoining their ruined capital, were unable to meet the perpetual demands of tribute. In some parts, it is said, two-thirds of the produce of their lands, the only wealth that remained, were extorted from them by the

h The siege of Crema is told at great length by Otto Morena; it is interesting, not only as a display of extraordinary, though unsuccessful, perseverance and intrepidity, but as the most detailed account of the methods used in the attack and defence of fortified places before the introduction of artillery. Scrip. Rer. Ital. t. vi. pp. 1032-1052.

imperial officers. It was in vain that they prostrated themselves at the feet of Frederic. He gave at the best only vague promises of redress; they were in his eyes rebels; his delegates had acted as faithful officers, whom, even if they had gone a little beyond his intentions, he could not be expected to punish.

But there still remained at the heart of Lombardy the strong principle of national liberty, imperishable among the perishing armies of her patriots, inconsumable in the conflagration of her cities.* Those whom private animosities had led to assist the German conqueror blushed at the degradation of their country, and at the share they had taken in it. A league was secretly formed, in which Cremona, one of the chief cities on the imperial side, took a prominent part. [A.D. 1167.] Those beyond the Adige, hitherto not much engaged in the disputes of central Lombardy, had already formed a separate confederacy to secure themselves from encroachments, which appeared the more unjust, as they had never borne arms against the emperor. Their first successes corresponded to the justice of their cause; Frederic was repulsed from the territory of Verona, a fortunate augury for the rest of Lombardy. [A.D. 1164.] These two clusters of cities on the east and west of the Adige now united themselves into the famous Lombard league, the terms of which were settled in a general diet. Their alliance was to last twenty years, during which they pledged themselves to mutual assistance against anyone who should exact more from them than they had been used to perform from the time of Henry to the first coming of Frederic into Italy; implying in this the recovery of their elective magistracies, their rights of war and peace, and those lucrative privileges which, under the name of regalian, had been wrested from them in the diet of Roncaglia.[i]

This union of the Lombard cities was formed at a very favorable juncture. Frederic had almost ever since his accession been engaged in open hostility with the see of Rome, and was

*Quæ neque Dardaniis campis potuere perire,
Nec cum capta capi, nec cum combusta cremari.—Ennius.

[i] For the nature and conditions of the Lombard league, besides the usual authorities, see Muratori's 48th dissertation. The words, a tempore Henrici Regis usque ad introitum imperatoris Frederici, leave it ambiguous which of the Henrys was intended. Muratori thinks it was Henry IV., because the cities then began to be independent. It seems, however, natural, when a king is mentioned without any numerical designation, to interpret it of the last bearing that name; as we say King William, for William the Third. And certainly the liberties of Lombardy were more perfect under Henry V. than his father; besides which, the one reign might still be remembered, and the other rested in tradition. The question, however, is of little moment.

pursuing the fruitless policy of Henry IV., who had endeavored to substitute an antipope of his own faction for the legitimate pontiff. In the prosecution of this scheme he had besieged Rome with a great army, which, the citizens resisting longer than he expected, fell a prey to the autumnal pestilence which visits the neighborhood of that capital. The flower of German nobility was cut off by this calamity, and the emperor recrossed the Alps, entirely unable for the present to withstand the Lombard confederacy. Their first overt act of insurrection was the rebuilding of Milan; the confederate troops all joined in this undertaking; and the Milanese, still numerous, though dispersed and persecuted, revived as a powerful republic. Lodi was compelled to enter into the league. Pavia alone continued on the imperial side. As a check to Pavia, and to the Marquis of Montferrat, the most potent of the independent nobility, the Lombards planned the erection of a new city between the confines of these two enemies, in a rich plain to the south of the Po, and bestowed upon it, in compliment to the Pope, Alexander III., the name of Alessandria. Though, from its hasty construction, Alessandria was even in that age deemed rude in appearance, it rapidly became a thriving and populous city.*j* The intrinsic energy and resources of Lombardy were now made manifest. Frederic, who had triumphed by their disunion, was unequal to contend against their league. After several years of indecisive war the emperor invaded the Milanese territory; but the confederates gave him battle, and gained a complete victory at Legnano. [A.D. 1176.] Frederic escaped alone and disguised from the field, with little hope of raising a fresh army, though still reluctant from shame to acquiesce in the freedom of Lombardy. He was at length persuaded, through the mediation of the republic of Venice, to consent to a truce of six years, the provisional terms of which were all favorable to the league. It was weakened, however, by the defection of some of its own members; Cremona, which had never cordially united with her ancient enemies, made separate conditions with Frederic, and suffered herself to be named among the cities on the imperial side in the armistice. Tortona and even Alessandria followed the same course during the six

j Alessandria was surnamed, in derision, della paglia, from the thatch with which the houses were covered. Frederic was very desirous to change its name to Cæsarea, as it is actually called in the peace of Constance, being at that time on the imperial side. But it soon recovered its former appellation.

years of its duration; a fatal testimony of unsubdued animosities, and omen of the calamities of Italy. At the expiration of the truce Frederic's anxiety to secure the crown for his son overcame his pride, and the famous peace of Constance established the Lombard republics in real independence. [A.D. 1183.]

By the treaty of Constance the cities were maintained in the enjoyment of all the regalian rights, whether within their walls or in their district, which they could claim by usage. Those of levying war, of erecting fortifications, and of administering civil and criminal justice, were specially mentioned. The nomination of their consuls, or other magistrates, was left absolutely to the citizens; but they were to receive the investiture of their office from an imperial legate. The customary tributes of provision during the emperor's residence in Italy were preserved; and he was authorized to appoint in every city a judge of appeal in civil causes. The Lombard league was confirmed, and the cities were permitted to renew it at their own discretion; but they were to take every ten years an oath of fidelity to the emperor. This just compact preserved, along with every security for the liberties and welfare of the cities, as much of the imperial prerogatives as could be exercised by a foreign sovereign consistently with the people's happiness.[k]

The successful insurrection of Lombardy is a memorable refutation of that system of policy to which its advocates give the appellation of vigorous, and which they perpetually hold forth as the only means through which a disaffected people are to be restrained. By a certain class of statesmen, and by all men of harsh and violent disposition, measures of conciliation, adherence to the spirit of treaties, regard to ancient privileges, or to those rules of moral justice which are paramount to all positive right, are always treated with derision. Terror is their only specific; and the physical inability to rebel their only security for allegiance. But if the razing of cities, the abrogation of privileges, the impoverishment and oppression of a nation could assure its constant submission, Frederic Barbarossa would never have seen the militia of Lombardy arrayed against him at Legnano. Whatever may be the pressure upon a conquered people, there will come a moment of their recoil. Nor is it material to allege, in answer to the present

[k] Muratori, Antiquitates Italiæ, Diss. 50.

instance, that the accidental destruction of Frederic's army by disease enabled the cities of Lombardy to succeed in their resistance. The fact may well be disputed, since Lombardy, when united, appears to have been more than equal to a contest with any German force that could have been brought against her; but even if we admit the effect of this circumstance, it only exhibits the precariousness of a policy which collateral events are always liable to disturb. Providence reserves to itself various means by which the bonds of the oppressor may be broken; and it is not for human sagacity to anticipate whether the army of a conqueror shall moulder in the unwholesome marshes of Rome or stiffen with frost in a Russian winter.

The peace of Constance presented a noble opportunity to the Lombards of establishing a permanent federal union of small republics; a form of government congenial from the earliest ages to Italy, and that, perhaps, under which she is again destined one day to flourish. They were entitled by the provisions of that treaty to preserve their league, the basis of a more perfect confederacy, which the course of events would have emancipated from every kind of subjection to Germany.[l] But dark, long-cherished hatreds, and that implacable vindictiveness which, at least in former ages, distinguished the private manners of Italy, deformed her national character, which can only be the aggregate of individual passions. For revenge she threw away the pearl of great price, and sacrificed even the recollection of that liberty which had stalked like a majestic spirit among the ruins of Milan.[m] It passed away, that high disdain of absolute power, that steadiness of self-devotion, which raised the half-civilized Lombards of the twelfth century to the level of those ancient republics from whose history our first notions of freedom and virtue are derived. The victim by turns of selfish and sanguinary factions, of petty tyrants, and of foreign invaders, Italy has fallen like a star from its place in heaven; she has seen her harvests trodden down by the

l Though there was no permanent diet of the Lombard league, the consuls and podestàs of the respective cities composing it occasionally met in congress to deliberate upon measures of general safety. Thus assembled, they were called Rectores Societatis Lombardiæ. It is evident that, if Lombardy had continued in any degree to preserve the spirit of union, this congress might readily have become a permanent body, like the Helvetic diet, with as extensive powers as are necessary in a federal constitution.—Muratori, Antichità Italiane, t. iii. p. 126; Dissert. 50; Sismondi, t. ii. p. 189.

m Anzi girar la libertà mirai,
E baciar lieta ogni ruina, e dire,
Ruine sì, ma servitu non mai.
Gaetana Passerini (ossia piutosto Giovan Battista Pastorini,) in Mathias, Componimenti Lirici. vol. iii. p. 331.

horses of the stranger, and the blood of her children wasted in quarrels not their own: Conquering or conquered, in the indignant language of her poet, still alike a slave,[n] a long retribution for the tyranny of Rome.

Frederic did not attempt to molest the cities of Lombardy in the enjoyment of those privileges conceded by the treaty of Constance. His ambition was diverted to a new scheme for aggrandizing the house of Suabia by the marriage of his eldest son Henry with Constance, the aunt and heiress of William II., King of Sicily. That kingdom, which the first monarch Roger had elevated to a high pitch of renown and power, fell into decay through the misconduct of his son William, surnamed the Bad, and did not recover much of its lustre under the second William, though styled the Good. His death without issue was apparently no remote event; and Constance was the sole legitimate survivor of the royal family. It is a curious circumstance that no hereditary kingdom appears absolutely to have excluded females from its throne, except that which from its magnitude was of all the most secure from falling into the condition of a province. The Sicilians felt too late the defect of their constitution, which permitted an independent people to be transferred, as the dowry of a woman, to a foreign prince, by whose ministers they might justly expect to be insulted and oppressed. Henry, whose marriage with Constance took place in 1186, and who succeeded in her right to the throne of Sicily three years afterwards, was exasperated by a courageous but unsuccessful effort of the Norman barons to preserve the crown for an illegitimate branch of the royal family; and his reign is disgraced by a series of atrocious cruelties. The power of the house of Suabia was now at its zenith on each side of the Alps; Henry received the imperial crown the year after his father's death in the third crusade, and even prevailed upon the princes of Germany to elect his infant son Frederic as his successor. But his own premature decease clouded the prospects of his family: Constance survived him but a year; and a child of four years old was left with the inheritance of a kingdom which his father's severity had rendered disaffected, and which the leaders of German mercenaries in his service desolated and disputed.

During the minority of Frederic II., from 1198 to 1216, the

[n] Per servir sempre o vincitrice o vinta.—Filicaja.

papal chair was filled by Innocent III., a name second only, and hardly second, to that of Gregory VII. Young, noble, and intrepid, he united with the accustomed spirit of ecclesiastical usurpation, which no one had ever carried to so high a point, the more worldly ambition of consolidating a separate principality for the Holy See in the centre of Italy. The real or spurious donations of Constantine, Pepin, Charlemagne, and Louis, had given rise to a perpetual claim, on the part of the popes, to very extensive dominions; but little of this had been effectuated, and in Rome itself they were thwarted by the prefect, an officer who swore fidelity to the emperor, and by the insubordinate spirit of the people. In the very neighborhood the small cities owned no subjection to the capital, and were probably as much self-governed as those of Lombardy. One is transported back to the earliest times of the republic in reading of the desperate wars between Rome and Tibur or Tusculum; neither of which was subjugated till the latter part of the twelfth century. At a further distance were the duchy of Spoleto, the march of Ancona, and what had been the exarchate of Ravenna, to all of which the popes had more or less grounded pretensions. Early in the last-mentioned age the famous Countess Matilda, to whose zealous protection Gregory VII. had been eminently indebted during his long dispute with the emperor, granted the reversion of all her possessions to the Holy See, first in the lifetime of Gregory, and again under the pontificate of Paschal III. These were very extensive, and held by different titles. Of her vast imperial fiefs, Mantua, Modena, and Tuscany, she certainly could not dispose. The duchy of Spoleto and march of Ancona were supposed to rest upon a different footing. I confess myself not distinctly to comprehend the nature of this part of her succession. These had been formerly among the great fiefs of the kingdom of Italy. But if I understand it rightly, they had tacitly ceased to be subject to the emperors some years before they were seized by Godfrey of Lorraine, father-in-law and stepfather of Matilda. To his son, her husband, she succeeded in the possession of those countries. They are commonly considered as her allodial or patrimonial property; yet it is not easy to see how, being herself a subject of the empire, she could transfer even her allodial estates from its sovereignty. Nor on the other hand can it apparently be maintained that she

was lawful sovereign of countries which had not long since been imperial fiefs, and the suzerainty over which had never been renounced. The original title of the Holy See, therefore, does not seem incontestable even as to this part of Matilda's donation. But I state with hesitation a difficulty to which the authors I have consulted do not advert.*o* It is certain, however, that the emperors kept possession of the whole during the twelfth century, and treated both Spoleto and Ancona as parts of the empire, notwithstanding continual remonstrances from the Roman pontiffs. Frederic Barbarossa, at the negotiations of Venice in 1177, promised to restore the patrimony of Matilda in fifteen years; but at the close of that period Henry VI. was not disposed to execute this arrangement, and granted the county in fief to some of his German followers. Upon his death the circumstances were favorable to Innocent III. The infant King of Sicily had been intrusted by Constance to his guardianship. A double election of Philip, brother of Henry VI., and of Otho Duke of Brunswick, engaged the princes of Germany, who had entirely overlooked the claims of young Frederic, in a doubtful civil war. Neither party was in a condition to enter Italy; and the imperial dignity was vacant for several years, till, the death of Philip removing one competitor, Otho IV., whom the pope had constantly favored, was crowned emperor. During this interval the Italians had no superior; and Innocent availed himself of it to maintain the pretensions of the see. These he backed by the production of rather a questionable document, the will of Henry VI., said to have been found among the baggage of Marquard, one of the German soldiers who had been invested with fiefs by the late emperor. The cities of what was later called the ecclesiastical state had in the twelfth century their own municipal government like those of Lombardy; but they were far less able to assert a complete independence. They gladly, therefore, put themselves under the protection of the Holy See, which held out some prospect of securing them from Marquard and other rapacious partisans, without disturbing their internal regula-

o It is almost hopeless to look for explicit information upon the rights and pretensions of the Roman see in Italian writers even of the eighteenth century. Muratori, the most learned, and upon the whole, the fairest of them all, moves cautiously over this ground; except when the claims of Rome happen to clash with those of the house of Este. But I have not been able to satisfy myself by the perusal of some dry and tedious dissertations in St. Marc (Abrégé Chronologique de l'Hist. de l'Italie, t. iv.), who, with learning scarcely inferior to that of Muratori, possessed more opportunity and inclination to speak out.

tions. Thus the duchy of Spoleto and march of Ancona submitted to Innocent III.; but he was not strong enough to keep constant possession of such extensive territories, and some years afterwards adopted the prudent course of granting Ancona in fief to the Marquis of Este. He did not, as may be supposed, neglect his authority at home; the prefect of Rome was now compelled to swear allegiance to the pope, which put an end to the regular imperial supremacy over that city, and the privileges of the citizens were abridged. This is the proper era of that temporal sovereignty which the bishops of Rome possess over their own city, though still prevented by various causes, for nearly three centuries, from becoming unquestioned and unlimited.

The policy of Rome was now more clearly defined than ever. In order to preserve what she had thus suddenly gained rather by opportunity than strength, it was her interest to enfeeble the imperial power, and consequently to maintain the freedom of the Italian republics. Tuscany had hitherto been ruled by a marquis of the emperor's appointment, though her cities were flourishing, and, within themselves, independent. In imitation of the Lombard confederacy, and impelled by Innocent III., they now (with the exception of Pisa, which was always strongly attached to the empire) formed a similar league for the preservation of their rights. In this league the influence of the pope was far more strongly manifested than in that of Lombardy. Although the latter had been in alliance with Alexander III., and was formed during the height of his dispute with Frederic, this ecclesiastical quarrel mingled so little in their struggle for liberty that no allusion to it is found in the act of their confederacy. But the Tuscan union was expressly established "for the honor and aggrandizement of the apostolic see." The members bound themselves to defend the possessions and rights of the church, and not to acknowledge any king or emperor without the approbation of the supreme pontiff.[p] The Tuscans accordingly were more thoroughly attached to the church party than the Lombards, whose principle was animosity towards the house of Suabia. Hence, when Innocent III., some time after, supported Frederic II. against the

[p] Quod possessiones et jura sacrosanctæ ecclesiæ bonâ fide defenderent; et quod nullum in regem aut imperatorem reciperent, nisi quem Romanus pontifex approbaret. Muratori, Dissert. 48. (Latin, t. iv. p. 320; Italian, t. iii. p. 112.)

Emperor Otho IV., the Milanese and their allies were arranged on the imperial side; but the Tuscans continued to adhere to the pope.

In the wars of Frederic Barbarossa against Milan and its allies, we have seen the cities of Lombardy divided, and a considerable number of them firmly attached to the imperial interest. It does not appear, I believe, from history, though it is by no means improbable, that the citizens were at so early a time divided among themselves, as to their line of public policy, and that the adherence of a particular city to the emperor, or to the Lombard league, was only, as proved afterwards the case, that one faction or another acquired an ascendency in its councils. But jealousies long existing between the different classes, and only suspended by the national struggle which terminated at Constance, gave rise to new modifications of interests, and new relations towards the empire. About the year 1200, or perhaps a little later, the two leading parties which divided the cities of Lombardy, and whose mutual animosity, having no general subject of contention, required the association of a name to direct as well as invigorate its prejudices, became distinguished by the celebrated appellations of Guelfs and Ghibelins; the former adhering to the papal side, the latter to that of the emperor. These names were derived from Germany, and had been the rallying word of faction for more than half a century in that country before they were transported to a still more favorable soil. The Guelfs took their name from a very illustrious family, several of whom had successively been dukes of Bavaria in the tenth and eleventh centuries. The heiress of the last of these intermarried with a younger son of the house of Este, a noble family settled near Padua, and possessed of great estates on each bank of the lower Po. They gave birth to a second line of Guelfs, from whom the royal house of Brunswick is descended. The name of Ghibelin is derived from a village in Franconia, whence Conrad the Salic came, the progenitor, through females, of the Suabian emperors. At the election of Lothaire in 1125, the Suabian family were disappointed of what they considered almost an hereditary possession; and at this time an hostility appears to have commenced between them and the house of Guelf, who were nearly related to Lothaire. Henry the Proud, and his son Henry the Lion, representatives of the latter fam-

ily, were frequently persecuted by the Suabian emperors; but their fortunes belong to the history of Germany.[q] Meanwhile the elder branch, though not reserved for such glorious destinies as the Guelfs, continued to flourish in Italy; the marquises of Este were by far the most powerful nobles in eastern Lombardy, and about the end of the twelfth century began to be considered as the heads of the church party in their neighborhood. They were frequently chosen to the office of podestà, or chief magistrate, by the cities of Romagna; and in 1208 the people of Ferrara set the fatal example of sacrificing their freedom for tranquillity, by electing Azzo VII., Marquis of Este, as their lord or sovereign.[r]

Otho IV. was son of Henry the Lion, and consequently head of the Guelfs. On his obtaining the imperial crown, the prejudices of Italian factions were diverted out of their usual channel. He was soon engaged in a quarrel with the pope, whose hostility to the empire was certain, into whatever hands it might fall. In Milan, however, and generally in the cities which had belonged to the Lombard league against Frederic I., hatred of the house of Suabia prevailed more than jealousy of the imperial prerogatives; they adhered to names rather than to principles, and supported a Guelf emperor even against the pope. Terms of this description, having no definite relation to principles which it might be troublesome to learn and defend, are always acceptable to mankind, and have the peculiar advantage of precluding altogether that spirit of compromise and accommodation, by which it is sometimes endeavored to obstruct their tendency to hate and injure each other. From this time, every city, and almost every citizen, gloried in one of these barbarous denominations. In several cities the imperial party predominated through hatred of their neighbors, who espoused that of the church. Thus the inveterate feuds between Pisa and Florence, Modena and Bologna, Cremona and Milan, threw them into opposite factions. But there was in every one of these a strong party against that which prevailed, and consequently a Guelf city frequently became Ghibelin, or conversely, according to the fluctuations of the time.[s]

[q] The German origin of these celebrated factions is clearly proved by a passage in Otho of Frisingen, who lived half a century before we find the denomination transferred to Italy. Struvius Corpus Hist. German. p. 378, and Muratori, A.D. 1152.

[r] Sismondi, t. ii. p. 329.

[s] For the Guelf and Ghibelin factions, besides the historians, the 51st dissertation of Muratori should be read. There is some degree of inaccuracy in his language, where he speaks of these distractions expiring at the beginning of the

The change to which we have adverted in the politics of the Guelf party lasted only during the reign of Otho IV. When the heir of the house of Suabia grew up to manhood, Innocent, who, though his guardian, had taken little care of his interests, as long as he flattered himself with the hope of finding a Guelf emperor obedient, placed the young Frederic at the head of an opposition, composed of cities always attached to his family, and of such as implicitly followed the see of Rome. He met with considerable success both in Italy and Germany, and after the death of Otho, received the imperial crown. But he had no longer to expect any assistance from the pope who conferred it. Innocent was dead, and Honorius III., his successor, could not behold without apprehension the vast power of Frederic, supported in Lombardy by a faction which balanced that of the church, and menacing the ecclesiastical territories on the other side, by the possession of Naples and Sicily. This kingdom, feudatory to Rome, and long her firmest ally, was now, by a fatal connection which she had not been able to prevent, thrown into the scale of her most dangerous enemy. Hence the temporal dominion which Innocent III. had taken so much pains to establish became a very precarious possession, exposed on each side to the attacks of a power that had legitimate pretensions to almost every province composing it. The life of Frederic II. was wasted in an unceasing contention with the church, and with his Italian subjects, whom she excited to rebellions against him. Without inveighing, like the popish writers, against this prince, certainly an encourager of letters, and endowed with many eminent qualities, we may lay to his charge a good deal of dissimulation; I will not add ambition, because I am not aware of any period in the reign of Frederic, when he was not obliged to act on his defence against the aggression of others. But if he had been a model of virtues, such

fifteenth century. Quel secolo, e vero, abbondò anch' esso di molte guerre, ma nulla si operò sotto nome o pretesto delle fazioni suddette. Solamente ritennero esse piede in alcume private famiglie. Antichità Italiane, t. iii. p. 148. But certainly the names of Guelf and Ghibelin, as party distinctions, may be traced all through the fifteenth century. The former faction showed itself distinctly in the insurrection of the cities subject to Milan, upon the death of Gian Galeazzo Visconti in 1404. It appeared again in the attempt of the Milanese to reëstablish their republic in 1447. Sismondi, t. ix. p. 334. So in 1477, Ludovico Sforza made use of Ghibelin prejudices to exclude the regent Bonne of Savoy as a Guelf. Sismondi, t. xi. p. 79. In the ecclesiastical state the same distinctions appear to have been preserved still later. Stefano Infessura, in 1487, speaks familiarly of them. Script. Rer. Ital. t. iii. p. 1221. And even in the conquest of Milan by Louis XII. in 1500, the Guelfs of that city are represented as attached to the French party, while the Ghibelins abetted Ludovico Sforza and Maximilian. Guicciardini, p. 399. Other passages in the same historian show these factions to have been alive in various parts of Italy.

men as Honorius III., Gregory IX., and Innocent IV., the popes with whom he had successively to contend, would not have given him respite, while he remained master of Naples, as well as the empire.[t]

It was the custom of every pope to urge princes into a crusade, which the condition of Palestine rendered indispensable, or, more properly, desperate. But this great piece of supererogatory devotion had never yet been raised into an absolute duty of their station, nor had even private persons been ever required to take up the cross by compulsion. Honorius III., however, exacted a vow from Frederic, before he conferred upon him the imperial crown, that he would undertake a crusade for the deliverance of Jerusalem. Frederic submitted to this engagement, which perhaps he never designed to keep, and certainly endeavored afterwards to evade. Though he became by marriage nominal King of Jerusalem,[u] his excellent understanding was not captivated with so barren a prospect, and at length his delays in the performance of his vow provoked Gregory IX. to issue against him a sentence of excommunication. Such a thunderbolt was not to be lightly regarded; and Frederic sailed, the next year, for Palestine. But having disdained to solicit absolution for what he considered as no crime, the court of Rome was excited to still fiercer indignation against this profanation of a crusade by an excommunicated sovereign. Upon his arrival in Palestine, he received intelligence that the papal troops had broken into the

[t] The rancor of bigoted Catholics against Frederic has hardly subsided at the present day. A very moderate commendation of him in Tiraboschi, vol. iv. t. 7, was not suffered to pass uncontradicted by the Roman editor. And though Muratori shows quite enough prejudice against that emperor's character, a fierce Roman bigot, whose animadversions are printed in the 17th volume of his Annals (8vo. edition), flies into paroxysms of fury at every syllable that looks like moderation. It is well known that, although the public policy of Rome has long displayed the pacific temper of weakness, the thermometer of ecclesiastical sentiment in that city stands very nearly as high as in the thirteenth century. [1810.] Giannone, who suffered for his boldness, has drawn Frederic II. very favorably, perhaps too favorably, in the 16th and 17th books of the Istoria Civile di Napoli.

[u] The second wife of Frederic was Iolante, or Violante, daughter of John, count of Brienne, by Maria, eldest daughter and heiress of Isabella, wife of Conrad, marquis of Montferrat. This Isabella was the youngest daughter of Almaric or Amaury, king of Jerusalem, and by the deaths of her brother Baldwin IV., of her eldest sister Sibilla, wife of Guy de Lusignan, and that sister's child Baldwin V., succeeded to a claim upon Jerusalem, which, since the victories of Saladin, was not very profitable. It is said that the kings of Naples deduce their title to that sounding inheritance from this marriage of Frederic (Giannone, l. xvi. c. 2); but the extinction of Frederic's posterity must have, strictly speaking, put an end to any right derived from him; and Giannone himself indicates a better title by the cession of Maria, a princess of Antioch, and legitimate heiress of Jerusalem, to Charles of Anjou in 1272. How far, indeed, this may have been regularly transmitted to the present King of Naples, I do not know, and am sure that it is not worth while to inquire.

kingdom of Naples. No one could rationally have blamed Frederic, if he had quitted the Holy Land as he found it; but he made a treaty with the Saracens, which, though by no means so disadvantageous as under all the circumstances might have been expected, served as a pretext for new calumnies against him in Europe. The charge of irreligion, eagerly and successfully propagated, he repelled by persecuting edicts against heresy that do no great honor to his memory, and availed him little at the time. Over his Neapolitan dominions he exercised a rigorous government, rendered perhaps necessary by the levity and insubordination characteristic of the inhabitants, but which tended, through the artful representations of Honorius and Gregory, to alarm and alienate the Italian republics.

A new generation had risen up in Lombardy since the peace of Constance, and the prerogatives reserved by that treaty to the empire were so seldom called into action, that few cities were disposed to recollect their existence. They denominated themselves Guelfs or Ghibelins, according to habit, and out of their mutual opposition, but without much reference to the empire. Those however of the former party, and especially Milan, retained their antipathy to the house of Suabia. Though Frederic II. was entitled, as far as established usage can create a right, to the sovereignty of Italy, the Milanese would never acknowledge him, nor permit his coronation at Monza, according to ancient ceremony, with the iron crown of the Lombard kings. The pope fomented, to the utmost of his power, this disaffected spirit, and encouraged the Lombard cities to renew their former league. This, although conformable to a provision in the treaty of Constance, was manifestly hostile to Frederic, and may be considered as the commencement of a second contest between the republican cities of Lombardy and the empire. But there was a striking difference between this and the former confederacy against Frederic Barbarossa. In the league of 1167, almost every city, forgetting all smaller animosities in the great cause of defending the national privileges, contributed its share of exertion to sustain that perilous conflict; and this transient unanimity in a people so distracted by internal faction as the Lombards is the surest witness to the justice of their undertaking. Sixty years afterwards, their war against the second Frederic had less of provocation and less of public

spirit. It was in fact a party struggle of Guelf and Ghibelin cities, to which the names of the church and the empire gave more of dignity and consistence.

The republics of Italy in the thirteenth century were so numerous and independent, and their revolutions so frequent, that it is a difficult matter to avoid confusion in following their history. It will give more arrangement to our ideas, and at the same time illustrate the changes that took place in these little states, if we consider them as divided into four clusters or constellations, not indeed unconnected one with another, yet each having its own centre of motion and its own boundaries. The first of these we may suppose formed of the cities in central Lombardy, between the Sessia and the Adige, the Alps and the Ligurian mountains; it comprehends Milan, Cremona, Pavia, Brescia, Bergamo, Parma, Piacenza, Mantua, Lodi, Alessandria, and several others less distinguished. These were the original seats of Italian liberty, the great movers in the wars of the elder Frederic. Milan was at the head of this cluster of cities, and her influence gave an ascendency to the Guelf party; she had, since the treaty of Constance, rendered Lodi and Pavia almost her subjects, and was in strict union with Brescia and Piacenza. Parma, however, and Cremona, were unshaken defenders of the empire. In the second class we may place the cities of the march of Verona, between the Adige and the frontiers of Germany. Of these there were but four worth mentioning: Verona, Vicenza, Padua, and Treviso. The citizens of all the four were inclined to the Guelf interests; but a powerful body of rural nobility, who had never been compelled, like those upon the Upper Po, to quit their fortresses in the hilly country, or reside within the walls, attached themselves to the opposite denomination.[v] Some of them obtained very great authority in the civil feuds of these four republics; and especially two brothers, Eccelin and Alberic da Romano, of a rich and distinguished family, known for its devotion to the empire. By extraordinary vigor and decision of character, by dissimulation and breach of oaths, by the intimidating effects of almost unparalleled cruelty, Eccelin da Romano became after some years the absolute master of three cities, Padua, Verona, and Vicenza; and the Guelf party, in consequence, was entirely subverted beyond the Adige, during the continuance

[v] Sismondi, t. ii. p. 222.

of his tyranny.[w] Another cluster was composed of the cities in Romagna; Bologna, Imola, Faenza, Ferrara, and several others. Of these, Bologna was far the most powerful, and, as no city was more steadily for the interests of the church, the Guelfs usually predominated in this class; to which also the influence of the house of Este not a little contributed. Modena, though not geographically within the limits of this division, may be classed along with it from her constant wars with Bologna. A fourth class will comprehend the whole of Tuscany, separated almost entirely from the politics of Lombardy and Romagna. Florence headed the Guelf cities in this province, Pisa the Ghibelin. The Tuscan union was formed, as has been said above, by Innocent III., and was strongly inclined to the popes; but gradually the Ghibelin party acquired its share of influence; and the cities of Siena, Arezzo, and Lucca shifted their policy, according to external circumstances or the fluctuations of their internal factions. The petty cities in the region of Spoleto and Ancona hardly perhaps deserve the name of republics; and Genoa does not readily fall into any of our four classes, unless her wars with Pisa may be thought to connect her with Tuscany.[x]

After several years of transient hostility and precarious truce, the Guelf cities of Lombardy engaged in a regular and protracted war with Frederic II., or more properly with their Ghibelin adversaries. Few events of this contest deserve particular notive. Neither party ever obtained such decisive advantages as had alternately belonged to Frederic Barbarossa and the Lombard confederacy, during the war of the preceding century. A defeat of the Milanese by the emperor, at Corte Nuova, in 1237, was balanced by his unsuccessful siege at

w The cruelties of Eccelin excited universal horror in an age when inhumanity towards enemies was as common as fear and revenge could make it. It was an usual trick of beggars, all over Italy, to pretend that they had been deprived of their eyes or limbs by the Veronese tyrant. There is hardly an instance in European history of so sanguinary a government subsisting for more than twenty years. The crimes of Eccelin are remarkably well authenticated by the testimony of several contemporary writers, who enter into great details. Most of these are found in the seventh volume of Scriptores Rerum Italicarum. Sismondi, t. iii. pp. 33, 111, 203, is more full than any of the moderns.

x I have taken no notice of Piedmont in this division. The history of that country seems to be less elucidated by ancient or modern writers than that of other parts of Italy. It was at this time divided between the counts of Savoy and marquises of Montferrat. But Asti, Chieri, and Turin, especially the two former, appear to have had a republican form of government. They were, however, not absolutely independent. The only Piedmontese city that can properly be considered as a separate state, in the thirteenth century, was Vercelli; and even there the bishop seems to have possessed a sort of temporal sovereignty. Denina, author of the Rivoluzioni d'Italia, first printed in 1769, lived to publish in his old age a history of western Italy, of Piedmont, from which I have gleaned a few facts.—Istoria dell' Italia Occidentale, Torino, 1809, 6 vols., 8vo.

Brescia the next year. The Pisans assisted Frederic to gain a great naval victory over the Genoese fleet, in 1241; but he was obliged to rise from the blockade of Parma, which had left the standard of Ghibelinism, in 1248. Ultimately, however, the strength of the house of Suabia was exhausted by so tedious a struggle; the Ghibelins of Italy had their vicissitudes of success; but their country, and even themselves, lost more and more of the ancient connection with Germany.

In this resistance to Frederic II. the Lombards were much indebted to the constant support of Gregory IX. and his successor Innocent IV.; and the Guelf, or the church party, were used as synonymous terms. These pontiffs bore an unquenchable hatred to the house of Suabia. No concessions mitigated their animosity; no reconciliation was sincere. Whatever faults may be imputed to Frederic, it is impossible for anyone, not blindly devoted to the court of Rome, to deny that he was iniquitously proscribed by her unprincipled ambition. His real crime was the inheritance of his ancestors, and the name of the house of Suabia. In 1239 he was excommunicated by Gregory IX. To this he was tolerably accustomed by former experience; but the sentence was attended by an absolution of his subjects from their allegiance, and a formal deposition. These sentences were not very effective upon men of vigorous minds, or upon those whose passions were engaged in their cause; but they influenced both those who feared the threatenings of the clergy and those who wavered already as to their line of political conduct. In the fluctuating state of Lombardy the excommunication of Frederic undermined his interests even in cities like Parma, that had been friendly, and seemed to identify the cause of his enemies with that of religion—a prejudice artfully fomented by means of calumnies propagated against himself, and which the conduct of such leading Ghibelins as Eccelin, who lived in an open defiance of God and man, did not contribute to lessen. In 1240, Gregory proceeded to publish a crusade against Frederic, as if he had been an open enemy to religion; which he revenged by putting to death all the prisoners he made who wore the cross. There was one thing wanting to make the expulsion of the emperor from the Christian commonwealth more complete. Gregory IX. accordingly projected, and Innocent IV. carried into effect, the convocation of a general council. This was held at Lyons, an

imperial city, but over which Frederic could no longer retain his supremacy. [A.D. 1245.] In this assembly, where one hundred and forty prelates appeared, the question whether Frederic ought to be deposed was solemnly discussed; he submitted to defend himself by his advocates; and the pope in the presence, though without formally collecting the suffrages of the council, pronounced a sentence, by which Frederic's excommunication was renewed, the empire and all his kingdoms taken away, and his subjects absolved from their fidelity. This is the most pompous act of usurpation in all the records of the church of Rome; and the tacit approbation of a general council seemed to incorporate the pretended right of deposing kings, which might have passed as a mad vaunt of Gregory VII. and his successors, with the established faith of Christendom.

Upon the death of Frederic II. in 1250, he left to his son Conrad a contest to maintain for every part of his inheritance, as well as for the imperial crown. But the vigor of the house of Suabia was gone; Conrad was reduced to fight for the kingdom of Naples, the only succession which he could hope to secure against the troops of Innocent IV., who still pursued his family with implacable hatred, and claimed that kingdom as forfeited to its feudal superior, the Holy See. After Conrad's premature death, which happened in 1254, the throne was filled by his illegitimate brother Manfred, who retained it by his bravery and address, in despite of the popes, till they were compelled to call in the assistance of a more powerful arm.

The death of Conrad brings to a termination that period in Italian history which we have described as nearly coextensive with the greatness of the house of Suabia. It is perhaps upon the whole the most honorable to Italy: that in which she displayed the most of national energy and patriotism. A Florentine or Venetian may dwell with pleasure upon later times, but a Lombard will cast back his eye across the desert of centuries, till it reposes on the field of Legnano. Great changes followed in the foreign and internal policy, in the moral and military character of Italy. But before we descend to the next period, it will be necessary to remark some material circumstances in that which has just passed under our review.

The successful resistance of the Lombard cities to such princes as both the Frederics must astonish a reader who brings to the story of these middle ages notions derived from modern

times. But when we consider not only the ineffectual control which could be exerted over a feudal army, bound only to a short term of service, and reluctantly kept in the field at its own cost, but the peculiar distrust and disaffection with which many German princes regarded the house of Suabia, less reason will appear for surprise. Nor did the kingdom of Naples, almost always in agitation, yield any material aid to the second Frederic. The main cause, however, of that triumph which attended Lombardy was the intrinsic energy of a free government. From the eleventh century, when the cities became virtually republican, they put out those vigorous shoots which are the growth of freedom alone. Their domestic feuds, their mutual wars, the fierce assaults of their national enemies, checked not their strength, their wealth, or their population; but rather as the limbs are nerved by labor and hardship, the republics of Italy grew in vigor and courage through the conflicts they sustained. If we but remember what savage license prevailed during the ages that preceded their rise, the rapine of public robbers, or of feudal nobles little differing from robbers, the contempt of industrious arts, the inadequacy of penal laws and the impossibility of carrying them into effect, we shall form some notion of the change which was wrought in the condition of Italy by the growth of its cities. In comparison with the blessings of industry protected, injustice controlled, emulation awakened, the disorders which ruffled their surface appear slight and momentary. I speak only of this first stage of their independence, and chiefly of the twelfth century, before those civil dissensions had reached their height by which the glory and prosperity of Lombardy was soon to be subverted.

We have few authentic testimonies as to the domestic improvement of the free Italian cities, while they still deserve the name. But we may perceive by history that their power and population, according to their extent of territory, were almost incredible. In Galvaneus Flamma, a Milanese writer, we find a curious statistical account of that city in 1288, which, though of a date about thirty years after its liberties had been overthrown by usurpation, must be considered as implying a high degree of previous advancement, even if we make allowance, as probably we should, for some exaggeration. The inhabitants are reckoned at 200,000; the private houses 13,000; the nobility alone dwelt in sixty streets; 8,000 gentlemen or

heavy cavalry (milites) might be mustered from the city and its district, and 240,000 men capable of arms: a force sufficient, the writer observes, to crush all the Saracens. There were in Milan six hundred notaries, two hundred physicians, eighty schoolmasters, and fifty transcribers of manuscripts. In the district were one hundred and fifty castles with adjoining villages. Such was the state of Milan, Flamma concludes, in 1288; it is not for me to say whether it has gained or lost ground since that time.[y] At this period the territory of Milan was not perhaps more extensive than the county of Surrey;* it was bounded at a little distance, on almost every side, by Lodi, or Pavia, or Bergamo, or Como. It is possible, however, that Flamma may have meant to include some of these as dependencies of Milan, though not strictly united with it. How flourishing must the state of cultivation have been in such a country, which not only drew no supplies from any foreign land, but exported part of their own produce! It was in the best age of their liberties, immediately after the battle of Legnano, that the Milanese commenced the great canal which conducts the waters of the Tesino to their capital, a work very extraordinary for that time. During the same period the cities gave proofs of internal prosperity that in many instances have descended to our own observation in the solidity and magnificence of their architecture. Ecclesiastical structures were perhaps more splendid in France and England; but neither country could pretend to match the palaces and public buildings, the streets flagged with stone, the bridges of the same material, or the commodious private houses of Italy.[z]

The courage of these cities was wrought sometimes to a tone of insolent defiance through the security inspired by their means of defence. From the time of the Romans to that when the use of gunpowder came to prevail, little change was made,

[y] Muratori, Script. Rerum Italic. t. xi. This expression of Flamma may seem to intimate that Milan had declined in his time, which was about 1340. Yet as she had been continually advancing in power, and had not yet experienced any tyrannical government, I cannot imagine this to have been the case; and the same Flamma, who is a great flatterer of the Visconti, and has dedicated a particular work to the praises of Azzo, asserts therein that he had greatly improved the beauty and convenience of the city, though Brescia, Cremona, and other places had declined. Azarius, too, a writer of the same age, makes a similar representation. Script. Rer. Ital. t. xvi. pp. 314, 317. Of Luchino Visconti he says Statum Madiolani reintegravit in tantum, quod non civitas, sed provincia videbatur.

* Surrey County has an area of 758 sq. m.

[z] Sismondi, t. iv. p. 176; Tiraboschi, t. iv. p. 426. See also the observations of Denina on the population and agriculture of Italy, l. xiv. c. 9, 10, chiefly, indeed, applicable to a period rather later than that of her free republics.

or perhaps could be made, in that part of military science which relates to the attack and defence of fortified places. We find precisely the same engines of offence; the cumbrous towers, from which arrows were shot at the besieged, the machines from which stones were discharged, the battering-rams which assailed the walls, and the basket-work covering (the vinea or testudo of the ancients, and the gattus or chat-chateil of the middle ages) under which those who pushed the battering engines were protected from the enemy. On the other hand, a city was fortified with a strong wall of brick or marble, with towers raised upon it at intervals, and a deep moat in front. Sometimes the antemural or barbacan was added; a rampart of less height, which impeded the approach of the hostile engines. The gates were guarded with a portcullis; an invention which, as well as the barbacan, was borrowed from the Saracens.[a] With such advantages for defence, a numerous and intrepid body of burghers might not unreasonably stand at bay against a powerful army; and as the consequences of capture were most terrible, while resistance was seldom hopeless, we cannot wonder at the desperate bravery of so many besieged towns. Indeed it seldom happened that one of considerable size was taken, except by famine or treachery. Tortona did not submit to Frederic Barbarossa till the besiegers had corrupted with sulphur the only fountain that supplied the citizens; nor Crema till her walls were overtopped by the battering engines. Ancona held out a noble example of sustaining the pressure of extreme famine. Brescia tried all the resources of a skilful engineer against the second Frederic; and swerved not from her steadiness, when that prince, imitating an atrocious precedent of his grandfather at the siege of Crema, exposed his prisoners upon his battering engines to the stones that were hurled by their fellow-citizens upon the walls.[b]

Of the government which existed in the republics of Italy during the twelfth and thirteenth centuries, no definite sketch can be traced. The chroniclers of those times are few and jejune; and, as is usual with contemporaries, rather intimate than describe the civil polity of their respective countries. It would indeed be a weary task, if it were even possible, to delineate the constitutions of thirty or forty little states which

a Muratori, Antiquit. Ital. Dissert. 26.

b See these sieges in the second and third volumes of Sismondi. That of Ancona, t. ii. pp. 145-206, is told with remarkable elegance, and several interesting circumstances.

were in perpetual fluctuation. The magistrates elected in almost all of them, when they first began to shake off the jurisdiction of their count or bishop, were styled consuls; a word very expressive to an Italian ear, since, in the darkest ages, tradition must have preserved some acquaintance with the republican government of Rome.[c] The consuls were always annual; and their office comprehended the command of the national militia in war, as well as the administration of justice and preservation of public order; but their number was various; two, four, six, or even twelve. In their legislative and deliberative councils the Lombards still copied the Roman constitution, or perhaps fell naturally into the form most calculated to unite sound discretion with the exercise of popular sovereignty. A council of trust and secrecy (della credenza) was composed of a small number of persons, who took the management of public affairs, and may be called the ministers of the state. But the decision upon matters of general importance, treaties of alliance or declarations of war, the choice of consuls or ambassadors, belonged to the general council. This appears not to have been uniformly constituted in every city; and according to its composition the government was more or less democratical. An ultimate sovereignty, however, was reserved to the mass of the people; and a parliament or general assembly was held to deliberate on any change in the form of constitution.[d]

About the end of the twelfth century a new and singular species of magistracy was introduced into the Lombard cities. During the tyranny of Frederic I. he had appointed officers of his own, called podestàs, instead of the elective consuls. It is remarkable that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office which had been abrogated when they first rose in rebellion against Frederic. From experience, as we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of podestà, a citizen of some neighboring state as their general, their

c Landulf, the younger, whose history of Milan extends from 1094 to 1133, calls himself publicorum officiorum particeps et *consulum* epistolarum dictator. Script. Rer. Ital. t. v. p. 486. This is, I believe the earliest mention of those magistrates. Muratori, Annali d' Italia, A.D. 1107.

d Muratori, Dissert. 46 and 52. Sismondi, t. i. p. 385.

criminal judge, and preserver of the peace. The last duty was frequently arduous, and required a vigorous as well as an upright magistrate. Offences against the laws and security of the commonwealth were during the middle ages as often, perhaps more often, committed by the rich and powerful than by the inferior class of society. Rude and licentious manners, family feuds and private revenge, or the mere insolence of strength, rendered the execution of criminal justice practically and in every day's experience, what is now little required, a necessary protection to the poor against oppression. The sentence of a magistrate against a powerful offender was not pronounced without danger of tumult; it was seldom executed without force. A convicted criminal was not, as at present, the stricken deer of society, whose disgrace his kindred shrink from participating, and whose memory they strive to forget. Imputing his sentence to iniquity, or glorying in an act which the laws of his fellow-citizens, but not their sentiments, condemned, he stood upon his defence amidst a circle of friends. The law was to be enforced not against an individual, but a family—not against a family, but a faction—not perhaps against a local faction, but the whole Guelf or Ghibelin name, which might become interested in the quarrel. The podestà was to arm the republic against her refractory citizen; his house was to be besieged and razed to the ground, his defenders to be quelled by violence: and thus the people, become familiar with outrage and homicide under the command of their magistrates, were more disposed to repeat such scenes at the instigation of their passions.*e*

The podestà was sometimes chosen in a general assembly, sometimes by a select number of citizens. His office was annual, though prolonged in peculiar emergencies. He was invariably a man of noble family, even in those cities which excluded their own nobility from any share in the government. He received a fixed salary, and was compelled to remain in the city after the expiration of his office for the purpose of answering such charges as might be adduced against his conduct. He could neither marry a native of the city, nor have any relation resident within the district, nor even, so great was their jealousy, eat or drink in the house of any citizen.

e Sismondi, t. iii. p. 258; from whom the substance of these observations is borrowed. They may be copiously illustrated by Villani's history of Florence and Stella's annals of Genoa.

The authority of these foreign magistrates was not by any means alike in all cities. In some he seems to have superseded the consuls, and commanded the armies in war. In others, as Milan and Florence, his authority was merely judicial. We find in some of the old annals the years headed by the names of the podestàs, as by those of the consuls in the history of Rome.[f]

The effects of the evil spirit of discord that had so fatally breathed upon the republics of Lombardy were by no means confined to national interests, or to the grand distinction of Guelf and Ghibelin. Dissensions glowed in the heart of every city, and as the danger of foreign war became distant, these grew more fierce and unappeasable. The feudal system had been established upon the principle of territorial aristocracy; it maintained the authority, it encouraged the pride of rank. Hence, when the rural nobility were compelled to take up their residence in cities, they preserved the ascendency of birth and riches. From the natural respect which is shown to these advantages, all offices of trust and command were shared amongst them; it is not material whether this were by positive right or continual usage. A limited aristocracy of this description, where the inferior citizens possess the right of selecting their magistrates by free suffrage from a numerous body of nobles, is not among the worst forms of government, and affords no contemptible security against oppression and anarchy. This regimen appears to have prevailed in most of the Lombard cities during the eleventh and twelfth centuries; though, in so great a deficiency of authentic materials, it would be too peremptory to assert this as an unequivocal truth. There is one very early instance, in the year 1041, of a civil war at Milan between the capitanei, or vassals of the empire, and the plebeian burgesses, which was appeased by the mediation of Henry III. This is ascribed to the ill treatment which the latter experienced —as was usual indeed in all parts of Europe, but which was endured with inevitable submission everywhere else. In this civil war, which lasted three years, the nobility were obliged to leave Milan, and carry on the contest in the adjacent plains; and one of their class, by name Lanzon, whether moved by ambition, or by virtuous indignation against tyranny, put himself at the head of the people.[g]

[f] Muratori, Dissert. 46.

[g] Landulfus, Hist. Mediolan, in Script. Rerum Ital. t. iv. p. 86; Muratori, Dissert. 52; Annali d' Italia, A.D. 1041; t. Marc, t. iii. p. 94.

From this time we scarcely find any mention of dissensions among the two orders till after the peace of Constance—a proof, however defective the contemporary annals may be, that such disturbances had neither been frequent nor serious. A schism between the nobles and people is noticed to have occurred at Faenza in 1185. A serious civil war of some duration broke out between them at Brescia in 1200. From this time mutual jealousies interrupted the domestic tranquillity of other cities, but it is about 1220 that they appear to have taken a decided aspect of civil war; within a few years of that epoch the question of aristocratical or popular command was tried by arms in Milan, Piacenza, Modena, Cremona, and Bologna.*h*

It would be in vain to enter upon the merits of these feuds, which the meagre historians of the time are seldom much disposed to elucidate, and which they saw with their own prejudices. A writer of the present age would show little philosophy if he were to heat his passions by the reflection, as it were, of those forgotten animosities, and aggravate, like a partial contemporary, the failings of one or another faction. We have no need of positive testimony to acquaint us with the general tenor of their history. We know that a nobility is always insolent, that a populace is always intemperate; and may safely presume that the former began, as the latter ended, by injustice and abuse of power. At one time the aristocracy, not content with seeing the annual magistrates selected from their body, would endeavor by usurpation to exclude the bulk of the citizens from suffrage. At another, the merchants, grown proud by riches, and confident of their strength, would aim at obtaining the honors of the state, which had been reserved to the nobility. This is the inevitable consequence of commercial wealth, and indeed of freedom and social order, which are the parents of wealth. There is in the progress of civilization a term at which exclusive privileges must be relaxed, or the possessors must perish along with them. In one or two cities a temporary compromise was made through the intervention of the pope, whereby offices of public trust, from the highest to the lowest, were divided, in equal proportions, or otherwise, between the nobles and the people. This also is no bad expedient, and proved singularly efficacious in appeasing the dissensions of ancient Rome.

h Sismondi, t. ii. p. 444; Muratori, Annali d' Italia, A.D. 1185, &c.

There is, however, a natural preponderance in the popular scale, which, in a fair trial, invariably gains on that of the less numerous class. The artisans, who composed the bulk of the population, were arranged in companies according to their occupations. Sometimes, as at Milan, they formed separate associations, with rules for their internal government.[i] The clubs, called at Milan la Motta and la Credenza, obtained a degree of weight not at all surprising to those who consider the spirit of mutual attachment which belongs to such fraternities; and we shall see a more striking instance of this hereafter in the republic of Florence. To so formidable and organized a democracy the nobles opposed their numerous families, the generous spirit that belongs to high birth, the influence of wealth and established name. The members of each distinguished family appear to have lived in the same street; their houses were fortified with square massive towers of commanding height, and wore the semblance of castles within the walls of a city. Brancaleon, the famous senator of Rome, destroyed one hundred and forty of these domestic entrenchments, which were constantly serving the purpose of civil broils and outrage. Expelled, as frequently happened, from the city, it was in the power of the nobles to avail themselves of their superiority in the use of cavalry, and to lay waste the district, till weariness of an unprofitable contention reduced the citizens to terms of compromise. But when all these resources were ineffectual, they were tempted or forced to sacrifice the public liberty to their own welfare, and lent their aid to a foreign master or a domestic usurper.

In all these scenes of turbulence, whether the contest was between the nobles and people or the Guelf or Ghibelin factions, no mercy was shown by the conquerors. The vanquished lost their homes and fortunes, and, retiring to other cities of their own party, waited for the opportunity of revenge. In a popular tumult the houses of the beaten side were frequently levelled to the ground—not perhaps from a sort of senseless fury, which Muratori inveighs against, but on account of the injury which these fortified houses inflicted upon the lower citizens. The most deadly hatred is that which men exasperated by proscription and forfeiture bear to their country; nor have we need to ask any other cause for the

[i] Muratori, Dissert. 52; Sismondi, t. iii. p. 262.

calamities of Italy than the bitterness with which an unsuccessful faction was thus pursued into banishment. When the Ghibelins were returning to Florence, after a defeat given to the prevailing party in 1260, it was proposed among them to demolish the city itself which had cast them out; and, but for the persuasion of one man, Farinata degl' Uberti, their revenge would have thus extinguished all patriotism.*j* It is to this that we must ascribe their proneness to call in assistance from every side, and to invite any servitude for the sake of retaliating upon their adversaries. The simple love of public liberty is in general, I fear, too abstract a passion to glow warmly in the human breast; and though often invigorated as well as determined by personal animosities and predilections, is as frequently extinguished by the same cause.

Independently of the two leading differences which embattled the citizens of an Italian state, their form of government and their relation to the empire, there were others more contemptible though not less mischievous. In every city the quarrels of private families became the foundation of general schism, sedition, and proscription. Sometimes these blended themselves with the grand distinctions of Guelf and Ghibelin; sometimes they were more nakedly conspicuous. This may be illustrated by one or two prominent examples. Imilda de' Lambertazzi, a noble young lady at Bologna, was surprised by her brothers in a secret interview with Boniface Gieremei, whose family had long been separated by the most inveterate enmity from her own. She had just time to escape, while the Lambertazzi despatched her lover with their poisoned daggers. On her return she found his body still warm, and a faint hope suggested the remedy of sucking the venom from his wounds. But it only communicated itself to her own veins, and they were found by her attendants stretched lifeless by each other's side. So cruel an outrage wrought the Gieremei to madness; they formed alliances with some neighboring republics; the Lambertazzi took the same measures; and after a fight in the streets of Bologna, of forty days' duration, the latter were driven out of the city, with all the Ghibelins, their political associates. Twelve thousand citizens were condemned to ban-

j G. Villani, l. vi. c. 82. Sismondi. I cannot forgive Dante for placing this patriot trà l' anime più nere, in one of the worst regions of his Inferno. The conversation of the poet with Farinata, cant. 10, is very fine, and illustrative of Florentine history.

ishment, their houses razed, and their estates confiscated.[k] Florence was at rest till, in 1215, the assassination of an individual produced a mortal feud between the families Buondelmonti and Uberti, in which all the city took a part. An outrage committed at Pistoja in 1300 split the inhabitants into the parties of Bianchi and Neri; and these, spreading to Florence, created one of the most virulent divisions which annoyed that republic. In one of the changes which attended this little ramification of faction, Florence expelled a young citizen who had borne offices of magistracy, and espoused the cause of the Bianchi. Dante Alighieri retired to the courts of some Ghibelin princes, where his sublime and inventive mind, in the gloom of exile, completed that original combination of vast and extravagant conceptions with keen political satire which has given immortality to his name, and even lustre to the petty contests of his time.[l]

In the earlier stages of the Lombard republic their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors; and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century. The popes sometimes endeavored to interpose an authority which, though not quite so direct, was held in greater veneration; and if their own tempers had been always pure from the selfish and vindictive passions of those whom they influenced, might have produced more general and permanent good. But they considered the Ghibelins as their own peculiar enemies, and the triumph of the opposite faction as the church's best security. Gregory X. and Nicholas III., whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a Ghibelin party as a counterpoise to his power, distinguished their pontificate by enforcing measures of reconciliation in all Italian cities; but their successors returned to the ancient policy and prejudices of Rome.

The singular history of an individual far less elevated in station than popes or emperors, Fra Giovanni di Vicenza, belongs to these times and to this subject. This Dominican friar

k Sismondi, t. iii. p. 442. This story may suggest that of Romeo and Juliet, itself founded upon an Italian novel, and not an unnatural picture of manners.

l Dino Compagni, in Scr. Rer. Ital. t. ix.; Villani, Ist. Fiorent. l. viii.; Dante, passim.

began his career at Bologna in 1233, preaching the cessation of war and forgiveness of injuries. He repaired from thence to Padua, to Verona, and the neighboring cities. At his command men laid down their instruments of war, and embraced their enemies. With that susceptibility of transient impulse natural to popular governments, several republics implored him to reform their laws and to settle their differences. A general meeting was summoned in the plain of Paquara, upon the banks of the Adige. The Lombards poured themselves forth from Romagna and the cities of the March; Guelfs and Ghibelins, nobles and burghers, free citizens and tenantry of feudal lords, marshalled around their carroccios, caught from the lips of the preacher the allusive promise of universal peace. They submitted to agreements dictated by Fra Giovanni, which contain little else than a mutual amnesty; whether it were that their quarrels had been really without object, or that he had dexterously avoided to determine the real points of contention. But power and reputation suddenly acquired are transitory. Not satisfied with being the legislator and arbiter of Italian cities, he aimed at becoming their master, and abused the enthusiasm of Vicenza and Verona to obtain a grant of absolute sovereignty. Changed from an apostle to an usurper, the fate of Fra Giovanni might be predicted; and he speedily gave place to those who, though they made a worse use of their power, had, in the eyes of mankind, more natural pretensions to possess it.[m]

[m] Tiraboschi, Storia della Letteratura, t. iv. p. 214 (a very well-written account) Sismondi, t. ii. p. 484.

PART II.

State of Italy after the Extinction of the House of Suabia—Conquest of Naples by Charles of Anjou—The Lombard Republics become severally subject to Princes or Usurpers—The Visconti of Milan—Their Aggrandizement—Decline of the Imperial Authority over Italy—Internal State of Rome—Rienzi—Florence—Her Forms of Government historically traced to the End of the Fourteenth Century—Conquest of Pisa—Pisa—Its Commerce, Naval Wars with Genoa, and Decay—Genoa—Her Contentions with Venice—War of Chioggia—Government of Genoa—Venice—Her Origin and Prosperity—Venetian Government—Its Vices—Territorial Conquests of Venice—Military System of Italy—Companies of Adventure—1, Foreign; Guarnieri, Hawkwood—And 2, Native; Braccio, Sforza—Improvements in Military Service—Arms, Offensive and Defensive—Invention of Gunpowder—Naples—First Line of Anjou—Joanna I.—Ladislaus—Joanna II.—Francis Sforza becomes Duke of Milan—Alfonso King of Naples—State of Italy during the Fifteenth Century—Florence—Rise of the Medici, and Ruin of their Adversaries—Pretensions of Charles VIII. to Naples.

From the death of Frederic II. in 1250, to the invasion of Charles VIII. in 1494, a long and undistinguished period occurs, which it is impossible to break into any natural divisions. It is an age in many respects highly brilliant: the age of poetry and letters, of art, and of continual improvement. Italy displayed an intellectual superiority in this period over the Transalpine nations which certainly had not appeared since the destruction of the Roman empire. But her political history presents a labyrinth of petty facts so obscure and of so little influence as not to arrest the attention, so intricate and incapable of classification as to leave only confusion to the memory. The general events that are worthy of notice, and give a character to this long period, are the establishment of small tyrannies upon the ruins of republican government in most of the cities, the gradual rise of three considerable states, Milan, Florence, and Venice, and the naval and commercial rivalry between the last city and Genoa, the final acquisition by the popes of their present territorial sovereignty, and the

revolutions in the kingdom of Naples under the lines of Anjou and Aragon.

After the death of Frederic II. the distinctions of Guelf and Ghibelin became destitute of all rational meaning. The most odious crimes were constantly perpetrated, and the utmost miseries endured, for an echo and a shade that mocked the deluded enthusiasts of faction. None of the Guelfs denied the nominal but indefinite sovereignty of the empire; and beyond a name the Ghibelins themselves would have been little disposed to carry it. But the virulent hatreds attached to these words grew continually more implacable, till ages of ignominy and tyrannical government had extinguished every energetic passion in the bosoms of a degraded people.

In the fall of the house of Suabia, Rome appeared to have consummated her triumph; and although the Ghibelin party was for a little time able to maintain itself, and even to gain ground, in the north of Italy, yet two events that occurred not long afterwards restored the ascendency of their adversaries. The first of these was the fall of Eccelin da Romano, whose rapid successes in Lombardy appeared to threaten the establishment of a tremendous despotism, and induced a temporary union of Guelf and Ghibelin states, by which he was overthrown. [A.D. 1259.] The next and far more important was the change of dynasty in Naples. This kingdom had been occupied, after the death of Conrad, by his illegitimate brother, Manfred, in the behalf, as he at first pretended, of young Conradin the heir, but in fact as his own acquisition. [A.D. 1254.] He was a prince of an active and firm mind, well fitted for his difficult post, to whom the Ghibelins looked up as their head, and as the representative of his father. It was a natural object with the popes, independently of their ill-will towards a son of Frederic II., to see a sovereign on whom they could better rely placed upon so neighboring a throne. Charles Count of Anjou, brother of St. Louis, was tempted by them to lead a crusade (for as such all wars for the interest of Rome were now considered) against the Neapolitan usurper. The chance of a battle decided the fate of Naples, and had a striking influence upon the history of Europe for several centuries. [A.D. 1266.] Manfred was killed in the field; but there remained the legitimate heir of the Frederics, a boy of seventeen years old, Conradin, son of Conrad, who rashly, as we say at

least after the event, attempted to regain his inheritance. He fell into the hands of Charles; and the voice of those rude ages, as well as of a more enlightened posterity, has united in branding with everlasting infamy the name of that prince, who did not hesitate to purchase the security of his own title by the public execution of an honorable competitor, or rather a rightful claimant of the throne he had usurped. [A.D. 1268.] With Conradin the house of Suabia was extinguished; but Constance, the daughter of Manfred, had transported his right to Sicily and Naples into the house of Aragon, by her marriage with Peter III.

This success of a monarch selected by the Roman pontiffs as their particular champion, turned the tide of faction over all Italy. He expelled the Ghibelins from Florence, of which they had a few years before obtained a complete command by means of their memorable victory upon the river Arbia. After the fall of Conradin that party was everywhere discouraged. Germany held out small hopes of support, even when the imperial throne, which had long been vacant, should be filled by one of her princes. The populace were in almost every city attached to the church and to the name of Guelf; the kings of Naples employed their arms, and the popes their excommunications; so that for the remainder of the thirteenth century the name of Ghibelin was a term of proscription in the majority of Lombard and Tuscan republics. Charles was constituted by the pope vicar-general in Tuscany. This was a new pretension of the Roman pontiffs, to name the lieutenants of the empire during its vacancy, which indeed could not be completely filled up without their consent. It soon, however, became evident that he aimed at the sovereignty of Italy. Some of the popes themselves, Gregory X. and Nicholas IV., grew jealous of their own creature. At the congress of Cremona, in 1269, it was proposed to confer upon Charles the seigniory of all the Guelf cities; but the greater part were prudent enough to choose him rather as a friend than a master.[a]

The cities of Lombardy, however, of either denomination,

[a] Sismondi, t. iii. p. 417. Several, however, including Milan, took an oath of fidelity to Charles the same year. Ibid. In 1273 he was lord of Alessandria and Piacenza, and received tribute from Milan, Bologna, and most Lombard cities. Muratori. It was evidently his intention to avail himself of the vacancy of the empire, and either to acquire that title himself, or at least to stand in the same relation as the emperors had done to the Italian states; which, according to the usage of the twelfth and thirteenth centuries, left them in possession of everything that we call independence, with the reservation of a nominal allegiance.

were no longer influenced by that generous disdain of one man's will which is to republican governments what chastity is to women—a conservative principle, never to be reasoned upon, or subjected to calculations of utility. By force, or stratagem, or free consent, almost all the Lombard republics had already fallen under the yoke of some leading citizen, who became the lord (signore) or, in the German sense, tyrant of his country. The first instance of a voluntary delegation of sovereignty was that above mentioned of Ferrara, which placed itself under the lord of Este. Eccelin made himself truly the tyrant of the cities beyond the Adige; and such experience ought naturally to have inspired the Italians with more universal abhorrence of despotism. But every danger appeared trivial in the eyes of exasperated factions when compared with the ascendency of their adversaries. Weary of unceasing and useless contests, in which ruin fell with an alternate but equal hand upon either party, liberty withdrew from a people who disgraced her name; and the tumultuous, the brave, the intractable Lombards became eager to submit themselves to a master, and patient under the heaviest oppression. Or, if tyranny sometimes overstepped the limits of forbearance, and a seditious rising expelled the reigning prince, it was only to produce a change of hands, and transfer the impotent people to a different, and perhaps a worse, despotism.[b] In many cities not a conspiracy was planned, not a sigh was breathed, in favor of republican government, after once they had passed under the sway of a single person. The progress indeed was gradual, though sure, from limited to absolute, from temporary to hereditary power, from a just and conciliating rule to extortion and cruelty. But before the middle of the fourteenth century, at the latest, all those cities which had spurned at the faintest mark of submission to the emperors lost even the recollection of self-government, and were bequeathed, like an undoubted patrimony, among the children of their new lords. Such is the progress of usurpation; and such the vengeance that Heaven reserves for

b See an instance of the manner in which one tyrant was exchanged for another, in the fate of Passerino Bonaccorsi, lord of Mantua, in 1328. Luigi di Gonzaga surprised him, rode the city (corse la città) with a troop of horse, crying, Viva il popolo, e muoja Messer Passerino e le sue gabelle! killed Passerino upon the spot, put his son to death in cold blood, e poi si fece signore della terra. Villani, l. x. c. 99, observes, like a good republican, that God had fulfilled in this the words of his Gospel (query, what Gospel?), I will slay my enemy by my enemy—abattendo l'uno tiranno per l'altre.

those who waste in license and faction its first of social blessings, liberty.c

The city most distinguished in both wars against the house of Suabia for an unconquerable attachment to republican institutions, was the first to sacrifice them in a few years after the death of Frederic II. Milan had for a considerable time been agitated by civil dissensions between the nobility and inferior citizens. These parties were pretty equally balanced, and their success was consequently alternate. Each had its own podestà, as a party-leader, distinct from the legitimate magistrate of the city. At the head of the nobility was their archbishop, Fra Leon Perego; the people chose Martin della Torre, one of a noble family which had ambitiously sided with the democratic faction. In consequence of the crime of a nobleman, who had murdered one of his creditors, the two parties took up arms in 1257. A civil war, of various success, and interrupted by several pacifications, which in that unhappy temper could not be durable, was terminated in about two years by the entire discomfiture of the aristocracy, and by the election of Martin della Torre as chief and lord (capitano e signore) of the people. Though the Milanese did not probably intend to renounce the sovereignty resident in their general assemblies, yet they soon lost the republican spirit; five in succession of the family della Torre might be said to reign in Milan; each, indeed, by a formal election, but with an implied recognition of a sort of hereditary title. Twenty years afterwards the Visconti, a family of opposite interests, supplanted the Torriani at Milan; and the rivalry between these great houses was not at an end till the final establishment of Matteo Visconti in 1313; but the people were not otherwise considered than as aiding by force the one or other party, and at most deciding between the pretensions of their masters.

The vigor and concert infused into the Guelf party by the successes of Charles of Anjou, were not very durable. That

c See the observations of Sismondi, t. iv. p. 212, on the conduct of the Lombard signori (I know not of any English word that characterizes them, except tyrant in its primitive sense) during the first period of their dominion. They were generally chosen in an assembly of the people, sometimes for a short term, prolonged in the same manner. The people was consulted upon several occasions. At Milan there was a council of 900 nobles, not permanent or representative, but selected and convened at the discretion of the government, throughout the reigns of the Visconti. Corio, pp. 519, 583. Thus, as Sismondi remarks, they respected the sovereignty of the people while they destroyed its liberty

prince was soon involved in a protracted and unfortunate quarrel with the kings of Aragon, to whose protection his revolted subjects in Italy had recurred. On the other hand, several men of energetic character retrieved the Ghibelin interests in Lombardy, and even in the Tuscan cities. The Visconti were acknowledged heads of that faction. A family early established as lords of Verona, the della Scala, maintained the credit of the same denomination between the Adige and the Adriatic. Castruccio Castrucani, an adventurer of remarkable ability, rendered himself prince of Lucca, and drew over a formidable accession to the imperial side from the heart of the church-party in Tuscany, though his death restored the ancient order of things. The inferior tyrants were partly Guelf, partly Ghibelin, according to local revolutions; but upon the whole the latter acquired a gradual ascendency. Those indeed who cared for the independence of Italy, or for their own power, had far less to fear from the phantom of imperial prerogatives, long intermitted and incapable of being enforced, than from the new race of foreign princes whom the church had substituted for the house of Suabia. The Angevin kings of Naples were sovereigns of Provence, and from thence easily encroached upon Piedmont, and threatened the Milanese. Robert, the third of this line, almost openly aspired, like his grandfather Charles I., to a real sovereignty over Italy. His offers of assistance to Guelf cities in war were always coupled with a demand of the sovereignty. Many yielded to his ambition; and even Florence twice bestowed upon him a temporary dictatorship. In 1314 he was acknowledged lord of Lucca, Florence, Pavia, Alessandria, Bergamo, and the cities of Romagna. In 1318 the Guelfs of Genoa found no other resource against the Ghibelin emigrants who were under their walls than to resign their liberties to the King of Naples for the term of ten years, which he procured to be renewed for six more. The Avignon popes, especially John XXII., out of blind hatred to the Emperor Louis of Bavaria and the Visconti family, abetted all these measures of ambition. But they were rendered abortive by Robert's death and the subsequent disturbances of his kingdom.

At the latter end of the thirteenth century there were almost as many princes in the north of Italy as there had been free cities in the preceding age. Their equality, and the fre-

quent domestic revolutions which made their seat unsteady, kept them for a while from encroaching on each other. Gradually, however, they became less numerous: a quantity of obscure tyrants were swept away from the smaller cities; and the people, careless or hopeless of liberty, were glad to exchange the rule of despicable petty usurpers for that of more distinguished and powerful families. About the year 1350 the central parts of Lombardy had fallen under the dominion of the Visconti. Four other houses occupied the second rank: that of Este at Ferrara and Modena; of Scala at Verona, which under Cane and Mastino della Scala had seemed likely to contest with the lords of Milan the supremacy over Lombardy; of Carrara at Padua, which later than any Lombard city had resigned her liberty; and of Gonzaga at Mantua, which, without ever obtaining any material extension of territory, continued, probably for that reason, to reign undisturbed till the eighteenth century. But these united were hardly a match, as they sometimes experienced, for the Visconti. That family, the object of every league formed in Italy for more than fifty years, in constant hostility to the church, and well inured to interdicts and excommunications, producing no one man of military talents, but fertile of tyrants detested for their perfidiousness and cruelty, was nevertheless enabled, with almost uninterrupted success, to add city after city to the dominion of Milan till it absorbed all the north of Italy. Under Gian Galeazzo, whose reign began in 1385, the viper (their armorial bearing) assumed indeed a menacing attitude: [d] he overturned the great family of Scala, and annexed their extensive possessions to his own; no power intervened from Vercelli in Piedmont to Feltre and Belluno; while the free cities of Tuscany, Pisa, Siena, Perugia, and even Bologna, as if by a kind of witchcraft, voluntarily called in a dissembling tyrant as their master.

Powerful as the Visconti were in Italy, they were long in washing out the tinge of recent usurpation, which humbled them before the legitimate dynasties of Europe. At the siege of Genoa in 1318 Robert King of Naples rejected with contempt the challenge of Marco Visconti to decide their quarrel in single combat.[e] But the pride of sovereigns, like that of

[d] Allusions to heraldry are very common in the Italian writers. All the historians of the fourteenth century habitually use the viper, il biscione, as a synonym for the power of Milan.

[e] Della qual cosa il Rè molto sdegno ne prese. Villani, l. ix. c. 93. It was reckoned a misalliance, as Dante tells us, in the widow of Nino di Gallura, a nobleman of Pisa, though a sort of

private men, is easily set aside for their interest. Galeazzo Visconti purchased with 100,000 florins a daughter of France for his son, which the French historians mention as a deplorable humiliation for their crown. A few years afterwards, Lionel Duke of Clarence, second son of Edward III., certainly not an inferior match, espoused Galeazzo's daughter. Both these connections were short-lived; but the union of Valentine, daughter of Gian Galeazzo, with the Duke of Orleans, in 1389, produced far more important consequences, and served to transmit a claim to her descendants, Louis XII. and Francis I., from which the long calamities of Italy at the beginning of the sixteenth century were chiefly derived. Not long after this marriage the Visconti were tacitly admitted among the reigning princes, by the erection of Milan into a duchy under letters-patent of the Emperor Wenceslaus.*f* [A.D. 1395.]

The imperial authority over Italy was almost entirely suspended after the death of Frederic II. A long interregnum followed in Germany; and when the vacancy was supplied by Rodolph of Hapsburg, he was too prudent to dissipate his moderate resources where the great house of Suabia had failed. [A.D. 1272.] About forty years afterwards the Emperor Henry of Luxemburg, a prince, like Rodolph, of small hereditary possessions, but active and discreet, availed himself of the ancient respect borne to the imperial name, and the mutual jealousies of the Italians, to recover for a very short time a remarkable influence. [A.D. 1309.] But, though professing neutrality and desire of union between the Guelfs and Ghibelins, he could not succeed in removing the distrust of the former; his exigencies impelled him to large demands of money; and the Italians, when they counted his scanty German cavalry, perceived that disobedience was altogether a matter of their own choice. Henry died, however, in time to save himself from any decisive reverse. His successors, Louis of Bavaria and Charles IV., descended from the Alps with similar motives, but after some temporary good fortune were obliged to return, not without discredit. Yet the Italians never broke that almost invisible thread which connected them with Germany; the fallacious name of Roman emperor still challenged their allegiance, though conferred by seven Teu-

prince in Sardinia, to marry one of the Visconti. Purgatorio, cant. viii.

f Corio, p. 538.

tonic electors without their concurrence. Even Florence, the most independent and high-spirited of republics, was induced to make a treaty with Charles IV. in 1355, which, while it confirmed all her actual liberties, not a little, by that very confirmation, affected her sovereignty.g This deference to the supposed prerogatives of the empire, even while they were least formidable, was partly owing to jealousy of French or Neapolitan interference, partly by the national hatred of the popes who had seceded to Avignon, and in some degree to a misplaced respect for antiquity, to which the revival of letters had given birth. The great civilians, and the much greater poets, of the fourteenth century, taught Italy to consider her emperor as a dormant sovereign, to whom her various principalities and republics were subordinate, and during whose absence alone they had legitimate authority.

In one part, however, of that country, the empire had, soon after the commencement of this period, spontaneously renounced its sovereignty. From the era of Pepin's donation, confirmed and extended by many subsequent charters, the Holy See had tolerably just pretensions to the province entitled Romagna, or the exarchate of Ravenna. But the popes, whose menaces were dreaded at the extremities of Europe, were still very weak as temporal princes. Even Innocent III. had never been able to obtain possession of this part of St. Peter's patrimony. The circumstances of Rodolph's accession inspired Nicholas III. with more confidence. That emperor granted a confirmation of everything included in the donations of Louis I., Otho, and his other predecessors; but was still reluctant or ashamed to renounce his imperial rights. Accordingly his charter is expressed to be granted without

g The republic of Florence was at this time in considerable peril from a coalition of the Tuscan cities against her, which rendered the protection of the emperor convenient. But it was very reluctantly that she acquiesced in even a nominal submission to his authority. The Florentine envoys, in their first address, would only use the words, Santa Corona, or Serenissimo Principe; senza ricordarlo imperadore, o dimostrargli alcuna reverenza di suggezzione domandando che il commune di Firenze volea essendogli ubbidiente, le cotali e le cotali franchigie per mantenere il suo popolo nell' usata libertade. Mat. Villani, p. 274. (Script. Rer. Ital. t. xiv.) This style made Charles angry; and the city soon atoned for it by accepting his privilege. In this, it must be owned, he assumes a decided tone of sovereignty. The gonfalonier and priors are declared to be his vicars. The deputies of the city did homage and swore obedience. Circumstances induced the principal citizens to make this submission, which they knew to be merely nominal. But the high-spirited people, not so indifferent about names, came into it very unwillingly. The treaty was seven times proposed, and as often rejected, in the consiglio del popolo, before their feelings were subdued. Its publication was received with no marks of joy. The public buildings alone were illuminated; but a sad silence indicated the wounded pride of every private citizen.—M. Villani, pp. 286, 290. Sismondi, t. vi. p. 238.

diminution of the empire (*sine demembratione imperii*); and his chancellor received an oath of fidelity from the cities of Romagna. But the pope insisting firmly on his own claim, Rodolph discreetly avoided involving himself in a fatal quarrel, and, in 1278, absolutely released the imperial supremacy over all the dominions already granted to the Holy See.*h*

This is a leading epoch in the temporal monarchy of Rome. But she stood only in the place of the emperor; and her ultimate sovereignty was compatible with the practicable independence of the free cities, or of the usurpers who had risen up among them. Bologna, Faenza, Rimini, and Ravenna, with many others less considerable, took an oath indeed to the pope, but continued to regulate both their internal concerns and foreign relations at their own discretion. The first of these cities was far preëminent above the rest for population and renown, and, though not without several intermissions, preserved a republican character till the end of the fourteenth century. The rest were soon enslaved by petty tyrants, more obscure than those of Lombardy. It was not easy for the pontiffs of Avignon to reinstate themselves in a dominion which they seemed to have abandoned; but they made several attempts to recover it, sometimes with spiritual arms, sometimes with the more efficacious aid of mercenary troops. The annals of this part of Italy are peculiarly uninteresting.

Rome itself was, throughout the middle ages, very little disposed to acquiesce in the government of her bishop. His rights were indefinite, and unconfirmed by positive law; the emperor was long sovereign, the people always meant to be free. Besides the common causes of insubordination and anarchy among the Italians, which applied equally to the capital city, other sentiments more peculiar to Rome preserved a continual, though not uniform, influence for many centuries. There still remained enough in the wreck of that vast inheritance to swell the bosoms of her citizens with a consciousness of their own dignity. They bore the venerable name, they contemplated the monuments of art and empire, and forgot, in the illusions of national pride, that the tutelar gods of the building were departed forever. About the middle of the twelfth century these recollections were heightened

h Muratori, ad ann. 1274, 1275, 1278; Sismondi, t. iii. p. 461.

by the eloquence of Arnold of Brescia, a political heretic who preached against the temporal jurisdiction of the hierarchy. In a temporary intoxication of fancy, they were led to make a ridiculous show of self-importance towards Frederic Barbarossa, when he came to receive the imperial crown; but the German sternly chided their ostentation, and chastised their resistance.*i* With the popes they could deal more securely. Several of them were expelled from Rome during that age by the seditious citizens. Lucius II. died of hurts received in a tumult. The government was vested in fifty-six senators, annually chosen by the people, through the intervention of an electoral body, ten delegates from each of the thirteen districts of the city.*j* This constitution lasted not quite fifty years. In 1192 Rome imitated the prevailing fashion by the appointment of an annual foreign magistrate.*k* Except in name, the senator of Rome appears to have perfectly resembled the podestà of other cities. This magistrate superseded the representative senate, who had proved by no means adequate to control the most lawless aristocracy of Italy. I shall not repeat the story of Brancaleon's rigorous and inflexible justice, which a great historian has already drawn from obscurity. It illustrates not the annals of Rome alone, but the general state of Italian society, the nature of a podestà's duty, and the difficulties of its execution. The office of senator survives * after more than six hundred years; but he no longer wields the "iron flail" *l* of Brancaleon; and his nomination proceeds, of course, from the supreme pontiff, not from the people. In the twelfth and thirteenth centuries the senate, and the senator who succeeded them, exercised one distinguishing attribute of sovereignty, that of coining gold and silver money. Some of their coins still exist, with legends in a very republican tone.*m* Doubtless the temporal authority of the popes varied according to their personal character. Innocent III. had much more than his predecessors for al-

i The impertinent address of a Roman orator to Frederic, and his answer, are preserved in Otho of Frisingen, l. ii. c. 22; but so much at length, that we may suspect some exaggeration. Otho is rather rhetorical. They may be read in Gibbon, c. 69.

j Sismondi, t. ii. p. 36. Besides Sismondi and Muratori, I would refer for the history of Rome during the middle ages to the last chapters of Gibbon's Decline and Fall.

k Ibid., p. 308.

* A.D. 1818.

l The readers of Spenser will recollect the iron flail of Talus, the attendant of Arthegal, emblematic of the severe justice of the lord deputy of Ireland. Sir Arthur Grey, shadowed under that allegory.

m Gibbon, vol. xii. p. 289; Muratori, Antiquit. Ital. Dissert. 27.

most a century, or than some of his successors. He made the senator take an oath of fealty to him, which, though not very comprehensive, must have passed in those times as a recognition of his superiority.[n]

Though there was much less obedience to any legitimate power at Rome than anywhere else in Italy, even during the thirteenth century, yet, after the secession of the popes to Avignon, their own city was left in a far worse condition than before. Disorders of every kind, tumult and robbery, prevailed in the streets. The Roman nobility were engaged in perpetual war with each other. Not content with their own fortified palaces, they turned the sacred monuments of antiquity into strongholds, and consummated the destruction of time and conquest. At no period has the city endured such irreparable injuries; nor was the downfall of the western empire so fatal to its capital as the contemptible feuds of the Orsini and Colonna families. Whatever there was of government, whether administered by a legate from Avignon or by the municipal authorities, had lost all hold on these powerful barons. In the midst of this degradation and wretchedness, an obscure man, Nicola di Rienzi, conceived the project of restoring Rome, not only to good order, but even to her ancient greatness. He had received an education beyond his birth, and nourished his mind with the study of the best writers. After many harangues to the people, which the nobility, blinded by their self-confidence, did not attempt to repress, Rienzi suddenly excited an insurrection, and obtained complete success. [A.D. 1347.] He was placed at the head of a new government, with the title of tribune, and with almost unlimited power. The first effects of this revolution were wonderful. All the nobles submitted, though with great reluctance; the roads were cleared of robbers; tranquillity was restored at home; some severe examples of justice intimidated offenders; and the tribune was regarded by all the people as the destined restorer of Rome and Italy. Though the court of Avignon could not approve of such an usurpation, it temporized enough not directly to oppose it. Most of the Italian republics, and some of the princes, sent ambassadors, and seemed to recognize pretensions which were tolerably ostentatious. The King of Hungary and Queen of Naples sub-

[n] Sismondi, p. 309.

mitted their quarrel to the arbitration of Rienzi, who did not, however, undertake to decide upon it. But this sudden exaltation intoxicated his understanding, and exhibited failings entirely incompatible with his elevated condition. If Rienzi had lived in our own age, his talents, which were really great, would have found their proper orbit. For his character was one not unusual among literary politicians—a combination of knowledge, eloquence, and enthusiasm for ideal excellence, with vanity, inexperience of mankind, unsteadiness, and physical timidity. As these latter qualities became conspicuous, they eclipsed his virtues and caused his benefits to be forgotten; he was compelled to abdicate his government, and retire into exile. After several years, some of which he passed in the prisons of Avignon, Rienzi was brought back to Rome, with the title of Senator, and under the command of the legate. It was supposed that the Romans, who had returned to their habits of insubordination, would gladly submit to their favorite tribune. And this proved the case for a few months; but after that time they ceased altogether to respect a man who so little respected himself in accepting a station where he could no longer be free; and Rienzi was killed in a sedition.*o*

Once more, not long after the death of Rienzi, the freedom of Rome seems to have revived in republican institutions, though with names less calculated to inspire peculiar recollections. Magistrates called bannerets, chosen from the thirteen districts of the city, with a militia of three thousand citizens at their command, were placed at the head of this commonwealth. The great object of this new organization was to intimidate the Roman nobility, whose outrages, in the total absence of government, had grown intolerable. Several of them were hanged the first year by order of the bannerets. The citizens, however, had no serious intention of throwing

o Sismondi, t. v. c. 37; t. vi. p. 201; Gibbon, c. 70; De Sade, Vie de Pétrarque, t. ii. passim; Tirabôschi, t. vi. p. 339. It is difficult to resist the admiration which all the romantic circumstances of Rienzi's history tend to excite, and to which Petrarch so blindly gave way. That great man's characteristic excellence was not good common sense. He had imbibed two notions, of which it is hard to say which was the more absurd: that Rome had a legitimate right to all her ancient authority over the rest of the world; and that she was likely to recover this authority in consequence of the revolution produced by Rienzi. Giovanni Villani, living at Florence, and a stanch republican, formed a very different estimate, which weighs more than the enthusiastic panegyrics of Petrarch. La detta impresa del tribuno era un' opera fantastica, e di poco durare. t. xii. c. 90. An illustrious female writer has drawn with a single stroke the character of Rienzi, Crescentius, and Arnold of Brescia, the fond restorers of Roman liberty, *qui ont pris les souvenirs pour les espérances.* Corinne, t. i. p. 159. Could Tacitus have excelled this?

off their allegiance to the popes. They provided for their own security, on account of the lamentable secession and neglect of those who claimed allegiance while they denied protection. But they were ready to acknowledge and welcome back their bishop as their sovereign. Even without this they surrendered their republican constitution in 1362, it does not appear for what reason, and permitted the legate of Innocent VI. to assume the government.[p] We find, however, the institution of bannerets revived and in full authority some years afterwards. But the internal history of Rome appears to be obscure, and I have not had opportunities of examining it minutely. Some degree of political freedom the city probably enjoyed during the schism of the church; but it is not easy to discriminate the assertion of legitimate privileges from the licentious tumults of the barons or populace. In 1435 the Romans formally took away the government from Eugenius IV., and elected seven signiors or chief magistrates, like the priors of Florence.[q] But this revolution was not of long continuance. On the death of Eugenius the citizens deliberated upon proposing a constitutional charter to the future pope. Stephen Porcaro, a man of good family and inflamed by a strong spirit of liberty, was one of their principal instigators. But the people did not sufficiently partake of that spirit. No measures were taken upon this occasion; and Porcaro, whose ardent imagination disguised the hopelessness of his enterprise, tampering in a fresh conspiracy, was put to death under the pontificate of Nicholas V.[r]

The province of Tuscany continued longer than Lombardy under the government of an imperial lieutenant. It was not till about the middle of the twelfth century that the cities of Florence, Lucca, Pisa, Siena, Arezzo, Pistoja, and several less considerable, which might, perhaps, have already their own elected magistrates, became independent republics. Their history is, with the exception of Pisa, very scanty till the death of Frederic II. The earliest fact of any importance recorded of Florence occurs in 1184, when it is said that Frederic Barbarossa took from her the dominion over the district or

[p] Matt. Villani, pp. 576, 604, 709; Sismondi, t. v. p. 92. He seems to have overlooked the former period of government by bannerets, and refers their institution to 1375.

[q] Script. Rerum Italic. t. iii. par. 2, p. 1128.

[r] Id. pp. 1131, 1134; Sismondi, t. x. p. 18.

county, and restored it to the rural nobility, on account of her attachment to the church.[s] This I chiefly mention to illustrate the system pursued by the cities of bringing the territorial proprietors in their neighborhood under subjection. During the reign of Frederic II. Florence became, as far as she was able, an ally of the popes. There was, indeed, a strong Ghibelin party, comprehending many of the greatest families, which occasionally predominated through the assistance of the emperor. It seems, however, to have existed chiefly among the nobility; the spirit of the people was thoroughly Guelf. After several revolutions, accompanied by alternate proscription and demolition of houses, the Guelf party, through the assistance of Charles of Anjou, obtained a final ascendency in 1266; and after one or two unavailing schemes of accommodation it was established as a fundamental law in the Florentine constitution that no person of Ghibelin ancestry could be admitted to offices of public trust, which, in such a government, was in effect an exclusion from the privileges of citizenship.

The changes of internal government and vicissitudes of success among factions were so frequent at Florence for many years after this time that she is compared by her great banished poet to one in sickness, who, unable to rest, gives herself momentary ease by continual change of posture in her bed.[t] They did not become much less numerous after the age of Dante. Yet the revolutions of Florence should, perhaps, be considered as no more than a necessary price of her liberty. It was her boast and her happiness to have escaped, except for one short period, that odious rule of vile usurpers under which so many other free cities had been crushed. A sketch of the constitution of so famous a republic ought not to be omitted in this place. Nothing else in the history of Italy after Frederic II. is so worthy of our attention.[u]

The basis of the Florentine polity was a division of the citizens exercising commerce into their several companies or arts. These were at first twelve; seven called the greater arts,

[s] Villani, l. v. c. 12.

[t] E se ben ti ricordi, e vedi il lume,
Vedrai te somigliante a quella inferma,
Che non può trovar posa in sù le piume,
Ma con dar volta suo dolore scherma.
Purgatorio, cant. vi.

[u] I have found considerable difficulties in this part of my task; no author with whom I am acquainted giving a tolerable view of the Florentine government except M. Sismondi, who is himself not always satisfactory.

and five lesser; but the latter were gradually increased to fourteen. The seven greater arts were those of lawyers and notaries, of dealers in foreign cloth, called sometimes Calimala, of bankers or money-changers, of woollen-drapers, of physicians and druggists, of dealers in silk, and of furriers. The inferior arts were those of retailers of cloth, butchers, smiths, shoemakers, and builders. This division, so far at least as regarded the greater arts, was as old as the beginning of the thirteenth century.[v] But it was fully established and rendered essential to the constitution in 1266. By the provisions made in that year each of the seven greater arts had a council of its own, a chief magistrate or consul, who administered justice in civil causes to all members of his company, and a banneret (gonfaloniere) or military officer, to whose standard they repaired when any attempt was made to disturb the peace of the city.

The administration of criminal justice belonged at Florence, as at other cities, to a foreign podestà, or rather to two foreign magistrates, the podestà and the capitano del popolo, whose jurisdiction, so far as I can trace it, appears to have been concurrent.[w] In the first part of the thirteenth century the authority of the podestà may have been more extensive than afterwards. These offices were preserved till the innovations of the Medici. The domestic magistracies underwent more changes. Instead of consuls, which had been the first denomination of the chief magistrates of Florence, a college of twelve or fourteen persons called Anziani or Buonuomini, but varying in name as well as number, according to revolutions of party, was established about the middle of the thirteenth century, to direct public affairs.[x] This order was entirely changed in 1282, and gave place to a new form of supreme magistracy, which lasted till the extinction of the republic. Six priors, elected every two months, one from each of the six quarters of the city, and from each of the greater arts, except that of lawyers, constituted an executive magistracy. They lived during their continuance in office

[v] Ammirato, ad ann. 1204 et 1235. Villani intimates, l. vii. c. 13, that the arts existed as commercial companies before 1266. Machiavelli and Sismondi express themselves rather inaccurately, as if they had been erected at that time, which indeed is the era of their political importance.

[w] Matteo Villani, p. 194. G. Villani places the institution of the podestà in 1207; we find it, however, as early as 1184. Ammirato.

[x] G. Villani, l. vi. c. 39.

in a palace belonging to the city, and were maintained at the public cost. The actual priors, jointly with the chiefs and councils (usually called la capitudine) of the seven greater arts, and with certain adjuncts (arroti) named by themselves, elected by ballot their successors. Such was the practice for about forty years after this government was established. But an innovation, begun in 1324, and perfected four years afterwards, gave a peculiar character to the constitution of Florence. A lively and ambitious people, not merely jealous of their public sovereignty, but deeming its exercise a matter of personal enjoyment, aware at the same time that the will of the whole body could neither be immediately expressed on all occasions, nor even through chosen representatives, without the risk of violence and partiality, fell upon the singular idea of admitting all citizens not unworthy by their station or conduct to offices of magistracy by rotation. Lists were separately made out by the priors, the twelve buonuomini, the chiefs and councils of arts, the bannerets and other respectable persons, of all citizens, Guelfs by origin, turned of thirty years of age, and, in their judgment, worthy of public trust. The lists thus formed were then united, and those who had composed them, meeting together, in number ninety-seven, proceeded to ballot upon every name. Whoever obtained sixty-eight black balls was placed upon the reformed list; and all the names it contained, being put on separate tickets into a bag or purse (imborsati), were drawn successively as the magistracies were renewed. As there were above fifty of these, none of which could be held for more than four months, several hundred citizens were called in rotation to bear their share in the government within two years. But at the expiration of every two years the scrutiny was renewed, and fresh names were mingled with those which still continued undrawn; so that accident might deprive a man for life of his portion of magistracy.*y*

Four councils had been established by the constitution of 1266 for the decision of all propositions laid before them by the executive magistrates, whether of a legislative nature or

y Villani, l. ix. c. 27, l. x. c. 110, l. xi. c. 105; Sismondi, t. v. p. 174. This species of lottery, recommending itself by an apparent fairness and incompatibility with undue influence, was speedily adopted in all the neighboring republics and has always continued, according to Sismondi, in Lucca, and in those cities of the ecclesiastical state which preserved the privilege of choosing their municipal officers: p. 95.

relating to public policy. These were now abrogated; and in their places were substituted one of 300 members, all plebeians, called consiglio di popolo, and one of 250, called consiglio di commune, into which the nobles might enter. These were changed by the same rotation as the magistracies, every four months.[z] A parliament, or general assembly of the Florentine people, was rarely convoked; but the leading principle of a democratical republic, the ultimate sovereignty of the multitude, was not forgotten. This constitution of 1324 was fixed by the citizens at large in a parliament; and the same sanction was given to those temporary delegations of the signiory to a prince, which occasionally took place. What is technically called by their historians *farsi popolo* was the assembly of a parliament, or a resolution of all derivative powers into the immediate operation of the popular will.

The ancient government of this republic appears to have been chiefly in the hands of its nobility. These were very numerous, and possessed large estates in the district. But by the constitution of 1266, which was nearly coincident with the triumph of the Guelf faction, the essential powers of magistracy as well as of legislation were thrown into the scale of the commons. The colleges of arts, whose functions became so eminent, were altogether commercial. Many, indeed, of the nobles enrolled themselves in these companies, and were among the most conspicuous merchants of Florence. These were not excluded from the executive college of the priors at its first institution in 1282. It was necessary, however, to belong to one or other of the greater arts in order to reach that magistracy. The majority, therefore, of the ancient families saw themselves pushed aside from the helm, which was intrusted to a class whom they had habitually held in contempt.

It does not appear that the nobility made any overt opposition to these democratical institutions. Confident in a force beyond the law, they cared less for what the law might provide against them. They still retained the proud spirit of personal independence which had belonged to their ancestors in the fastnesses of the Apennines. Though the laws of Florence and a change in Italian customs had transplanted their residence to the city, it was in strong and lofty houses that they dwelt, among their kindred, and among the fellows of their

[z] Villani, l. ix. c. 27, l. x. c. 110, l. xi. c. 105; Sismondi, t. v. p. 174.

rank. Notwithstanding the tenor of the constitution, Florence was for some years after the establishment of priors incapable of resisting the violence of her nobility. Her historians all attest the outrages and assassinations committed by them on the inferior people. It was in vain that justice was offered by the podestà and the capitano del popolo. Witnesses dared not to appear against a noble offender; or if, on a complaint, the officer of justice arrested the accused, his family made common cause to rescue their kinsman, and the populace rose in defence of the laws, till the city was a scene of tumult and bloodshed. I have already alluded to this insubordination of the higher classes as general in the Italian republics; but the Florentine writers, being fuller than the rest, are our best specific testimonies.*a*

The dissensions between the patrician and plebeian orders ran very high, when Giano della Bella, a man of ancient lineage, but attached, without ambitious views, so far as appears, though not without passion, to the popular side, introduced a series of enactments exceedingly disadvantageous to the ancient aristocracy. [A.D. 1295.] The first of these was the appointment of an executive officer, the gonfalonier of justice, whose duty it was to enforce the sentences of the podestà and capitano del popolo in cases where the ordinary officers were insufficient. A thousand citizens, afterwards increased to four times that number, were bound to obey his commands. They were distributed into companies, the gonfaloniers or captains of which became a sort of corporation or college, and a constituent part of the government. [A.D. 1295.] This new militia seems to have superseded that of the companies of arts, which I have not observed to be mentioned at any later period. The gonfalonier of justice was part of the signiory along with the priors, of whom he was reckoned the president, and changed, like them, every two months. He was, in fact, the first magistrate of Florence.*b* If Giano della Bella had trusted to the efficacy of this new security for justice, his fame would have

a Villani, l. vii. c. 113, l. viii. c. 8; Ammirato, Storia Fiorentina, l. iv. in cominciamento.

b It is to be regretted that the accomplished biographer of Lorenzo de' Medici should have taken no pains to inform himself of the most ordinary particulars in the constitution of Florence. Among many other errors he says, vol. ii. p. 51, 5th edit., that the gonfalonier of justice was subordinate to the delegated mechanics (a bad expression), or priori dell' arti, whose number, too, he augments to ten. The proper style of the republic seems to run thus; I priori dell' arti e gonfaloniere di giustizia, il popolo e 'l comune della città di Firenze. G. Villani, l. xii. c. 109.

been beyond reproach. But he followed it up by harsher provisions. The nobility were now made absolutely ineligible to the office of prior. For an offence committed by one of a noble family, his relations were declared responsible in a penalty of 3,000 pounds. And, to obviate the difficulty arising from the frequent intimidation of witnesses, it was provided that common fame, attested by two credible persons, should be sufficient for the condemnation of a nobleman.*c*

These are the famous ordinances of justice which passed at Florence for the great charter of her democracy. They have been reprobated in later times as scandalously unjust; and I have little inclination to defend them. The last, especially, was a violation of those eternal principles which forbid us, for any calculations of advantage, to risk the sacrifice of innocent blood. But it is impossible not to perceive that the same unjust severity has sometimes, under a like pretext of necessity, been applied to the weaker classes of the people, which they were in this instance able to exercise towards their natural superiors.

The nobility were soon aware of the position in which they stood. For half a century their great object was to procure the relaxation of the ordinances of justice. But they had no success with an elated enemy. In three years' time, indeed, Giano della Bella, the author of these institutions, was driven into exile; a conspicuous, though by no means singular, proof of Florentine ingratitude.*d* The wealth and physical strength of the nobles were, however, untouched; and their influence must always have been considerable. In the great feuds of the Bianchi and Neri the ancient families were most distinguished. No man plays a greater part in the annals of Florence at the beginning of the fourteenth century than Corso Donati, chief of the latter faction, who might pass as representative of the turbulent, intrepid, ambitious citizen-noble of an Italian republic.*e* But the laws gradually became more sure of obedience; the sort of proscription which attended the ancient nobles lowered their spirit; while a new aristocracy began to raise its head, the aristocracy of families who, after filling the

c Villani, l. viii. c. 1; Ammirato, p. 188, edit. 1647. A magistrate, called l' esecutor della giustizia, was appointed with authority equal to that of the podestà for the special purpose of watching over the observation of the ordinances of justice. Ammirato, p. 666.

d Villani, l. viii. c. 8.

e Dino compagni; Villani.

highest magistracies for two or three generations, obtained an hereditary importance, which answered the purpose of more unequivocal nobility; just as in ancient Rome plebeian families, by admission to curule offices, acquired the character and appellation of nobility, and were only distinguishable by their genealogy from the original patricians.*f* Florence had her plebeian nobles (popolani grandi), as well as Rome; the Peruzzi, the Ricci, the Albizi, the Medici, correspond to the Catos, the Pompeys, the Brutuses, and the Antonies. But at Rome the two orders, after an equal partition of the highest offices, were content to respect their mutual privileges; at Florence the commoner preserved a rigorous monopoly, and the distinction of high birth was that it debarred men from political franchises and civil justice.*g*

This second aristocracy did not obtain much more of the popular affection than that which it superseded. Public outrage and violation of law became less frequent; but the new leaders of Florence are accused of continual misgovernment at home and abroad, and sometimes of peculation. There was of course a strong antipathy between the leading commoners and the ancient nobles; both were disliked by the people. In order to keep the nobles under more control the governing party more than once introduced a new foreign magistrate, with the title of captain of defence (della guardia), whom they invested with an almost unbounded criminal jurisdiction. One Gabrielli of Agobbio was twice fetched for this purpose; and in each case he behaved in so tyrannical a manner as to occasion a tumult.*h* [A.D. 1336 and 1340.] His office, however, was of short duration, and the title at least did not import a sovereign command. But very soon afterwards Florence had to experience one taste of a cup which her neighbors had drunk off to the dregs, and to animate her magnanimous love of freedom by a knowledge of the calamities of tyranny.

A war with Pisa, unsuccessfully, if not unskilfully, conducted, gave rise to such dissatisfaction in the city, that the leading commoners had recourse to an appointment some-

f La nobilità civile, se bene non in baronaggi, è capace di grandissimi honori, percioche esercitando i supremi magistrati della sua patria, viene spesso a comandare a capitani d' eserciti e ella stessa per se ò in mare, ò in terra, molte vota i supremi carichi adopera. E tale è la Fiorentina nobilità. Ammirato delle Famiglie Fiorentine. Firenze, 1614, p. 25.

g Quello, che all' altre città suolo recare splendore, in Firenze era dannoso, o veramente vano e inutile, says Ammirato of nobility. Storia Fiorentina, p. 161.

h Villani, l. xi. c. 39 and 117.

thing like that of Gabrielli, and from similar motives. Walter de Brienne, Duke of Athens, was descended from one of the French crusaders who had dismembered the Grecian empire in the preceding century; but his father, defeated in battle, had lost the principality along with his life, and the titular duke was an adventurer in the court of France. He had been, however, slightly known at Florence on a former occasion. There was a uniform maxim among the Italian republics that extraordinary powers should be conferred upon none but strangers. The Duke of Athens was accordingly pitched upon for the military command, which was united with domestic jurisdiction. This appears to have been promoted by the governing party in order to curb the nobility ; but they were soon undeceived in their expectations. The first act of the Duke of Athens was to bring four of the most eminent commoners to capital punishment for military offences. These sentences, whether just or otherwise, gave much pleasure to the nobles, who had so frequently been exposed to similar severity, and to the populace, who are naturally pleased with the humiliation of their superiors. Both of these were caressed by the duke, and both conspired, with blind passion, to second his ambitious views. It was proposed and carried in a full parliament, or assembly of the people, to bestow upon him the signiory for life. [A. D. 1342.] The real friends of their country, as well as the oligarchy, shuddered at this measure. Throughout all the vicissitudes of party Florence had never yet lost sight of republican institutions. Not that she had never accommodated herself to temporary circumstances by naming a signior. Charles of Anjou had been invested with that dignity for the term of ten years; Robert King of Naples, for five; and his son, the Duke of Calabria, was at his death signior of Florence. These princes named the podestà, if not the priors; and were certainly pretty absolute in their executive powers, though bound by oath not to alter the statutes of the city.[i] But their office had always been temporary. Like the dictatorship of Rome, it was a confessed, unavoidable evil; a suspension, but not extinguishment, of rights. Like that, too, it was a dangerous precedent, through which crafty ambition and popular rashness might ultimately subvert the republic. If Walter de Brienne had possessed the subtle prudence of a Mat-

[i] Villani, l. ix. c. 55, 60, 135, 328.

teo Visconti or a Cane della Scala, there appears no reason to suppose that Florence would have escaped the fate of other cities; and her history might have become as useless a record of perfidy and assassination as that of Mantua or Verona.*j*

But, happily for Florence, the reign of tyranny was very short. The Duke of Athens had neither judgment nor activity for so difficult a station. He launched out at once into excesses which it would be desirable that arbitrary power should always commit at the outset. The taxes were considerably increased; their produce was dissipated. The honor of the state was sacrificed by an inglorious treaty with Pisa; her territory was diminished by some towns throwing off their dependence. Severe and multiplied punishments spread terror through the city. The noble families, who had on the duke's election destroyed the ordinances of justice, now found themselves exposed to the more partial caprice of a despot. He filled the magistracies with low creatures from the inferior artificers; a class which he continued to flatter.*k* Ten months passed in this manner, when three separate conspiracies, embracing most of the nobility and most of the great commoners, were planned for the recovery of freedom. The duke was protected by a strong body of hired cavalry. Revolutions in an Italian city were generally effected by surprise. The streets were so narrow and so easily secured by barricades, that, if a people had time to stand on its defence, no cavalry was of any avail. On the other hand, a body of lancers in plate-armor might dissipate any number of a disorderly populace. Accordingly, if a prince or usurper would get possession by surprise, he, as it was called, rode the city; that is, galloped with his cavalry along the streets, so as to prevent the people from collecting to erect barricades. This expression is very usual with the historians of the fourteenth century.*l* The conspirators at Florence were too quick for the Duke of Athens. The city was barricaded in every direction; and after a contest of some duration he consented to abdicate his signiory.

Thus Florence recovered her liberty. Her constitutional laws now seemed to revive of themselves. But the nobility, who had taken a very active part in the recent liberation of their country, thought it hard to be still placed under the rigorous

j Villani, l. xii. c. 1, 2, 3.
k Ibid., c. 8.
l Ibid., l. x. c. 81; Castruccio. . . . corse la città di Pisa due volte. Sismondi, t. v. p. 105.

ordinances of justice. Many of the richer commoners acquiesced in an equitable partition of magistracies, which was established through the influence of the bishop. But the populace of Florence, with its characteristic forgetfulness of benefits, was tenacious of those proscriptive ordinances. The nobles, too, elated by their success, began again to strike and injure the inferior citizens. A new civil war in the city streets decided their quarrel; after a desperate resistance many of the principal houses were pillaged and burned; and the perpetual exclusion of the nobility was confirmed by fresh laws. But the people, now sure of their triumph, relaxed a little upon this occasion the ordinances of justice; and to make some distinction in favor of merit or innocence, effaced certain families from the list of nobility. Five hundred and thirty persons were thus elevated, as we may call it, to the rank of commoners.[m] As it was beyond the competence of the republic of Florence to change a man's ancestors, this nominal alteration left all the real advantages of birth as they were, and was undoubtedly an enhancement of dignity, though, in appearance, a very singular one. Conversely, several unpopular commoners were ennobled, in order to disfranchise them. Nothing was more usual in subsequent times than such an arbitrary change of rank, as a penalty or a benefit.[n] Those nobles who were rendered plebeian by favor were obliged to change their name and arms.[o] The constitution now underwent some change. From six the priors were increased to eight; and instead of being chosen from each of the greater arts, they were taken from the four quarters of the city, the lesser artisans, as I conceive, being admissible. The gonfaloniers of companies were reduced to sixteen. And these, along with the signiory, and the twelve buonuomini, formed the college, where every proposition was discussed before it could be offered to the councils for their legislative sanction. But it could only originate, strictly speaking, in the signiory, that is, the gonfalonier of justice, and eight priors, the rest

m Villani, l. xii. c. 18-23. Sismondi says, by a momentary oversight, cinq cent trente *familles*, t. v. p. 377. There were but thirty-seven noble families at Florence, as M. Sismondi himself informs us, t. iv. p. 66; though Villani reckons the number of individuals at 1500. Nobles, or *grandi* as they are more strictly called, were such as had been inscribed, or rather proscribed, as such in the ordinances of justice; at least I do not know what other definition there was.

n Messer Antonio di Baldinaccio degli Adimari, tutto che fosse de più grandi e nobili, per grazia era messo tra 'l popolo. —Villani, l. xii. c. 108.

o Ammirato, p. 748. There were several exceptions to this rule in later times. The Pazzi were made popolani, plebeians by favor of Cosmo de' Medici. Machiavelli.

of the college having merely the function of advice and assistance.[p]

Several years elapsed before any material disturbance arose at Florence. Her contemporary historian complains, indeed, that mean and ignorant persons obtained the office of prior, and ascribes some errors in her external policy to this cause.[q] Besides the natural effects of the established rotation, a particular law, called the *divicto*, tended to throw the better families out of public office. By this law two of the same name could not be drawn for any magistracy: which, as the ancient families were extremely numerous, rendered it difficult for their members to succeed; especially as a ticket once drawn was not replaced in the purse, so that an individual liable to the divieto was excluded until the next biennial revolution.[r] This created dissatisfaction among the leading families. They were likewise divided by a new faction, entirely founded, as far as appears, on personal animosity between two prominent houses, the Albizi and the Ricci. The city was, however, tranquil, when in 1357 a spring was set in motion which gave quite a different character to the domestic history of Florence.

At the time when the Guelfs, with the assistance of Charles of Anjou, acquired an exclusive domination in the republic, the estates of the Ghibelins were confiscated. One-third of these confiscations was allotted to the state; another went to repair the losses of Guelf citizens; but the remainder became the property of a new corporate society, denominated the Guelf party (parte Guelfa), with a regular internal organization. The Guelf party had two councils, one of fourteen and one of sixty members; three, or afterwards four, captains, elected by scrutiny every two months, a treasury, and common seal; a little republic within the republic of Florence. Their primary duty was to watch over the Guelf interest; and for this purpose they had a particular officer for the accusation of suspected Ghibelins.[s] We hear not much, however, of the Guelf society for nearly a century after their establishment. The Ghibelins hardly ventured to show themselves after the fall of the White Guelfs in 1304, with whom they had been connected, and confiscation had almost annihilated that unfortunate faction. But as the oli-

[p] Nardi, Storia di Firenze, p. 7, edit. 1584. Villani, loc. cit.
[q] Matteo Villani in Script. Rer. Italic, t. xiv. p. 98, 244.
[r] Sismondi, t. vi. p. 338.
[s] G. Villani, l. vii. c. 16.

garchy of Guelf families lost part of its influence through the divieto and system of lottery, some persons of Ghibelin descent crept into public offices; and this was exaggerated by the zealots of an opposite party, as if the fundamental policy of the city was put into danger.

The Guelf society had begun, as early as 1346, to manifest some disquietude at the foreign artisans, who, settling at Florence and becoming members of some of the trading corporations, pretended to superior offices. They procured accordingly a law excluding from public trust and magistracy all persons not being natives of the city or its territory. Next year they advanced a step farther; and, with a view to prevent disorder, which seemed to threaten the city, a law was passed declaring every one whose ancestors at any time since 1300 had been known Ghibelins, or who had not the reputation of sound Guelf principles, incapable of being drawn or elected to offices.[t] It is manifest from the language of the historian who relates these circumstances, and whose testimony is more remarkable from his having died several years before the politics of the Guelf corporation more decidedly showed themselves, that the real cause of their jealousy was not the increase of Ghibelinism, a merely plausible pretext, but the democratical character which the government had assumed since the revolution of 1343; which raised the fourteen inferior arts to the level of those which the great merchants of Florence exercised. In the Guelf society the ancient nobles retained a considerable influence. The laws of exclusion had never been applied to that corporation. Two of the captains were always noble, two were commoners. The people, in debarring the nobility from ordinary privileges, were little aware of the more dangerous channel which had been left open to their ambition. With the nobility some of the great commoners acted in concert, and especially the family and faction of the Albizi. The introduction of obscure persons into office still continued, and some measures more vigorous than the law of 1347 seemed necessary to restore the influence of their aristocracy. They proposed, and, notwithstanding the reluctance of the priors, carried by violence, both in the preliminary deliberations of the signiory and in the two councils, a law by which every person accepting an office who should be convicted of Ghibelinism or Ghibelin de-

[t] G. Villani, l. xii. c. 72 and 79.

scent, upon testimony of public fame, became liable to punishment, capital or pecuniary, at the discretion of the priors. To this law they gave a retrospective effect, and indeed it appears to have been little more than a revival of the provisions made in 1347, which had probably been disregarded. Many citizens who had been magistrates within a few years were cast in heavy fines on this indefinite charge. But the more usual practice was to warn (ammonire) men beforehand against undertaking public trust. If they neglected this hint, they were sure to be treated as convicted Ghibelins. Thus a very numerous class, called Ammoniti, was formed of proscribed and discontented persons, eager to throw off the intolerable yoke of the Guelf society. For the imputation of Ghibelin connections was generally an unfounded pretext for crushing the enemies of the governing faction.[u] Men of approved Guelf principles and origin were every day warned from their natural privileges of sharing in magistracy. This spread a universal alarm through the city; but the great advantage of union and secret confederacy rendered the Guelf society, who had also the law on their side, irresistible by their opponents. Meanwhile the public honor was well supported abroad; Florence had never before been so distinguished as during the prevalence of this oligarchy.[v]

The Guelf society had governed with more or less absoluteness for nearly twenty years, when the republic became involved, through the perfidious conduct of the papal legate, in a war with the Holy See. Though the Florentines were by no means superstitious, this hostility to the church appeared almost an absurdity to determined Guelfs, and shocked those prejudices about names which make up the politics of vulgar minds. The Guelf society, though it could not openly resist the popular indignation against Gregory XI., was not heartily inclined to this war. Its management fell therefore into the hands of eight commissioners, some of them not well affected to the society; whose administration was so successful and

u Besides the effect of ancient prejudice, Ghibelinism was considered at Florence, in the fourteenth century, as immediately connected with tyrannical usurpation. The Guelf party, says Matteo Villani, is the foundation rock of liberty in Italy; so that, if any Guelf becomes a tyrant, he must of necessity turn to the Ghibelin side; and of this there have been many instances: p. 481. So Giovanni Villani says of Passerino, lord of Mantua, that his ancestors had been Guelfs, ma per essere signore e tiranno si fece Ghibellino: l. x. c. 99. And Matteo Villani of the Pepoli at Bologna; essendo di natura Guelfi, per la tirannia erano quasi alienati della parte: p. 69.

v M. Villani, pp. 531, 637, 731. Ammirato; Machiavelli; Sismondi.

popular as to excite the utmost jealousy in the Guelfs. They began to renew their warnings, and in eight months excluded fourscore citizens.[w]

The tyranny of a court may endure for ages; but that of a faction is seldom permanent. In June, 1378, the gonfalonier of justice was Salvestro de' Medici, a man of approved patriotism, whose family had been so notoriously of Guelf principles that it was impossible to warn him from office. He proposed to mitigate the severity of the existing law. His proposition did not succeed; but its rejection provoked an insurrection, the forerunner of still more alarming tumults. The populace of Florence, like that of other cities, was terrible in the moment of sedition; and a party so long dreaded shrank before the physical strength of the multitude. Many leaders of the Guelf society had their houses destroyed, and some fled from the city. But instead of annulling their acts, a middle course was adopted by the committee of magistrates who had been empowered to reform the state; the Ammoniti were suspended three years longer from office, and the Guelf society preserved with some limitations. This temporizing course did not satisfy either the Ammoniti or the populace. The greater arts were generally attached to the Guelf society. Between them and the lesser arts, composed of retail and mechanical traders, there was a strong jealousy. The latter was adverse to the prevailing oligarchy and to the Guelf society, by whose influence it was maintained. They were eager to make Florence a democracy in fact as well as in name, by participating in the executive government.

But every political institution appears to rest on too confined a basis to those whose point of view is from beneath it. While the lesser arts were murmuring at the exclusive privileges of the commercial aristocracy, there was yet an inferior class of citizens who thought their own claims to equal privileges irrefragable. The arrangement of twenty-one trading companies had still left several kinds of artisans unincorporated, and consequently unprivileged. These had been attached to the art with which their craft had most connections in a sort of dependent relation. Thus to the company of drapers, the most wealthy of all, the various occupations instrumental in the manufacture, as woolcombers, dyers, and weavers, were ap-

[w] Ammirato, p. 709.

pendant.[x] Besides the sense of political exclusion, these artisans alleged that they were oppressed by their employers of the art, and that, when they complained to the consul, their judge in civil matters, no redress could be procured. A still lower order of the community was the mere populace, who did not practise any regular trade, or who only worked for daily hire. These were called ciompi, a corruption, it is said, of the French compère.

" Let no one," says Machiavelli in this place, " who begins an innovation in a state expect that he shall stop it at his pleasure, or regulate it according to his intention." After about a month from the first sedition another broke out, in which the ciompi, or lowest populace, were alone concerned. Through the surprise, or cowardice, or disaffection of the superior citizens, this was suffered to get ahead, and for three days the city was in the hand of a tumultuous rabble. It was vain to withstand their propositions, had they even been more unreasonable than they were. But they only demanded the establishment of two new arts for the trades hitherto dependent, and one for the lower people; and that three of the priors should be chosen from the greater arts, three from the fourteen lesser, and two from those just created. Some delay, however, occurring to prevent the sanction of these innovations by the councils, a new fury took possession of the populace; the gates of the palace belonging to the signiory were forced open, the priors compelled to fly, and no appearance of a constitutional magistracy remained to throw the veil of law over the excesses of anarchy. The republic seemed to rock from its foundations; and the circumstance to which historians ascribe its salvation is not the least singular in this critical epoch. One Michel di Lando, a woolcomber half dressed and without shoes, happened to hold the standard of justice wrested from the proper officer when the populace burst into the palace. Whether he was previously conspicuous in the tumult is not recorded; but the wild, capricious mob, who had destroyed what they had no conception how to rebuild, suddenly cried out that Lando should be gonfalonier or signior, and reform the city at his pleasure.

A choice, arising probably from wanton folly, could not have been better made by wisdom. Lando was a man of courage,

[x] Before the year 1340, according to Villani's calculation, the woollen trade occupied 30,000 persons, l. xi. c. 93.

moderation, and integrity. He gave immediate proofs of these qualities by causing his office to be respected. The eight commissioners of the war, who, though not instigators of the sedition, were well pleased to see the Guelf party so entirely prostrated, now fancied themselves masters, and began to nominate priors.

But Lando sent a message to them, that he was elected by the people, and that he could dispense with their assistance. He then proceeded to the choice of priors. Three were taken from the greater arts; three from the lesser; and three from the two new arts and the lower people. This eccentric college lost no time in restoring tranquillity, and compelled the populace, by threat of punishment, to return to their occupations. But the ciompi were not disposed to give up the pleasures of anarchy so readily. They were dissatisfied at the small share allotted to them in the new distribution of offices, and murmured at their gonfalonier as a traitor to the popular cause. Lando was aware that an insurrection was projected; he took measures with the most respectable citizens; the insurgents, when they showed themselves, were quelled by force, and the gonfalonier retired from office with an approbation which all historians of Florence have agreed to perpetuate. Part of this has undoubtedly been founded on a consideration of the mischief which it was in his power to inflict. The ciompi, once checked, were soon defeated. The next gonfalonier was, like Lando, a woolcomber; but, wanting the intrinsic merit of Lando, his mean station excited universal contempt. None of the arts could endure their low coadjutors; a short struggle was made by the populace, but they were entirely overpowered with considerable slaughter, and the government was divided between the seven greater and sixteen lesser arts, in nearly equal proportions.

The party of the lesser arts, or inferior tradesmen, which had begun this confusion, were left winners when it ceased. Three men of distinguished families who had instigated the revolution became the leaders of Florence; Benedetto Alberti, Tomaso Strozzi, and Georgio Scali. Their government had at first to contend with the ciompi, smarting under loss and disappointment. But a populace which is beneath the inferior mechanics may with ordinary prudence be kept in subjection by a government that has a well-organized militia at its command. The

Guelf aristocracy was far more to be dreaded. Some of them had been banished, some fined, some ennobled: the usual consequences of revolution which they had too often practised to complain.

A more iniquitous proceeding disgraces the new administration. Under pretence of conspiracy, the chief of the house of Albizi, and several of his most eminent associates, were thrown into prison. So little evidence of the charge appeared that the podestà refused to condemn them; but the people were clamorous for blood, and half with, half without the forms of justice, these noble citizens were led to execution. The part he took in this murder sullies the fame of Benedetto Alberti, who in his general conduct had been more uniformly influenced by honest principles than most of his contemporaries. Those who shared with him the ascendency in the existing government, Strozzi and Scali, abused their power by oppression towards their enemies, and insolence towards all. Their popularity was, of course, soon at an end. Alberti, a sincere lover of freedom, separated himself from men who seemed to emulate the arbitrary government they had overthrown. An outrage of Scali, in rescuing a criminal from justice, brought the discontent to a crisis; he was arrested, and lost his head on the scaffold; while Strozzi, his colleague, fled from the city. But this event was instantly followed by a reaction, which Alberti, perhaps, did not anticipate. Armed men filled the streets; the cry of "Live the Guelfs!" was heard. After a three years' depression the aristocratical party regained its ascendency. They did not revive the severity practised towards the Ammoniti; but the two new arts, created for the small trades, were abolished, and the lesser arts reduced to a third part, instead of something more than one half, of public offices. Several persons who had favored the plebeians were sent into exile; and among these Michel di Lando, whose great services in subduing anarchy ought to have secured the protection of every government. Benedetto Alberti, the enemy by turns of every faction—because every faction was in its turn oppressive—experienced some years afterwards the same fate. For half a century after this time no revolution took place at Florence. The Guelf aristocracy, strong in opulence and antiquity, and rendered prudent by experience, under the guidance of the Albizi family, maintained a preponderating influence without

much departing, the times considered, from moderation and respect for the laws.[y]

It is sufficiently manifest, from this sketch of the domestic history of Florence, how far that famous republic was from affording a perfect security for civil rights or general tranquillity. They who hate the name of free constitutions may exult in her internal dissensions, as in those of Athens or Rome. But the calm philosopher will not take his standard of comparison from ideal excellence, nor even from that practical good which has been reached in our own unequalled constitution, and in some of the republics of modern Europe. The men and the institutions of the fourteenth century are to be measured by their contemporaries. Who would not rather have been a citizen of Florence than a subject of the Visconti? In a superficial review of history we are sometimes apt to exaggerate the vices of free states, and to lose sight of those inherent in tyrannical power. The bold censoriousness of republican historians, and the cautious servility of writers under an absolute monarchy, conspire to mislead us as to the relative prosperity of nations. Acts of outrage and tumultuous excesses in a free state are blazoned in minute detail, and descend to posterity; the deeds of tyranny are studiously and perpetually suppressed. Even those historians who have no particular motives for concealment turn away from the monotonous and disgusting crimes of tyrants. "Deeds of cruelty," it is well observed by Matteo Villani, after relating an action of Bernabo Visconti, "are little worthy of remembrance; yet let me be excused for having recounted one out of many, as an example of the peril to which men are exposed under the yoke of an unbounded tyranny."[z] The reign of Bernabo afforded abundant instances of a like kind. Second only to Eccelin among the tyrants of Italy, he rested the security of his dominion upon tortures and death, and his laws themselves enact the protraction of capital punishment through forty days of suffering.[a] His nephew, Giovanni Maria, is said, with a madness like that of Nero or Commodus, to have coursed the streets of Milan by night with

[y] For this part of Florentine history, besides Ammirato, Machiavelli, and Sismondi, I have read an interesting narrative of the sedition of the ciompi, by Gino Capponi, in the eighteenth volume of Muratori's collection. It has an air of liveliness and truth which is very pleasing, but it breaks off rather too soon, at the instant of Lando's assuming the office of banneret. Another contemporary writer, Melchione de Stefani, who seems to have furnished the materials of the three historians above mentioned, has not fallen in my way.

[z] P. 434.

[a] Sismondi, t. vi. p. 316; Corio, Ist. di Milano, p. 486.

blood-hounds, ready to chase and tear any unlucky passenger.[b] Nor were other Italian principalities free from similar tyrants, though none, perhaps, upon the whole, so odious as the Visconti. The private history of many families, such, for instance, as the Scala and the Gonzaga, is but a series of assassinations. The ordinary vices of mankind assumed a tint of portentous guilt in the palaces of Italian princes. Their revenge was fratricide, and their lust was incest.

Though fertile and populous, the proper district of Florence was by no means extensive. An independent nobility occupied the Tuscan Appennines with their castles. Of these the most conspicuous were the counts of Guidi, a numerous and powerful family, who possessed a material influence in the affairs of Florence and of all Tuscany till the middle of the fourteenth century, and some of whom preserved their independence much longer.[c] To the south, the republics of Arezzo, Perugia, and Siena; to the west, those of Volterra, Pisa, and Lucca; Prato and Pistoja to the north, limited the Florentine territory. It was late before these boundaries were removed. During the usurpations of Uguccione at Pisa, and of Castruccio at Lucca, the republic of Florence was always unsuccessful in the field. After the death of Castruccio she began to act more vigorously, and engaged in several confederacies with the powers of Lombardy, especially in a league with Venice against Mastino della Scala. But the republic made no acquisition of territory till 1351, when she annexed the small city of Prato, not ten miles from her walls.[d] Pistoja, though still nominally independent, received a Florentine garrison about the same time. Several additions were made to the district by fair purchase from the nobility of the Apennines, and a few by main force. The territory was still very little proportioned to the fame and power of Florence. The latter was founded upon her vast commercial opulence. Every Italian state employed mercenary troops, and the richest was, of course, the most powerful. In the war against Mastino della Scala in 1336 the revenues of Florence are reckoned by Villani at three hundred thousand florins, which, as he observes, is more than the king of Naples or of

b Corio, p. 595.

c G. Villani, l. v. c. 37, 41, et alibi. The last of the counts Guidi, having unwisely embarked in a confederacy against Florence, was obliged to give up his ancient patrimony in 1440.

d M. Villani, p. 72. This was rather a measure of usurpation; but the republic had some reason to apprehend that Prato might fall into the hands of the Visconti. Their conduct towards Pistoja was influenced by the same motive; but it was still further removed from absolute justice: p. 91.

Aragon possesses.[e] The expenditure went at that time very much beyond the receipt, and was defrayed by loans from the principal mercantile firms, which were secured by public funds, the earliest instance, I believe, of that financial resource.[f] Her population was computed at ninety thousand souls. Villani reckons the district at eighty thousand men, I suppose those only of military age; but this calculation must have been too large, even though he included, as we may presume, the city in his estimate.[g] Tuscany, though well cultivated and flourishing, does not contain by any means so great a number of inhabitants in that space at present.

The first eminent conquest made by Florence was that of Pisa, early in the fifteenth century. Pisa had been distinguished as a commercial city ever since the age of the Othos. From her ports, and those of Genoa, the earliest naval armaments of the western nations were fitted out against the Saracen corsairs who infested the Mediterranean coasts. In the eleventh century she undertook, and, after a pretty long struggle, completed, the important, or at least the splendid, conquest of Sardinia, an island long subject to a Moorish chieftain.

e G. Villani, l. ix. c. 90-93. These chapters contain a very full and interesting statement of the revenues, expenses, population, and internal condition of Florence at that time. Part of them is extracted by M. Sismondi, t. v. p. 365. The gold florin was worth about ten shillings of our money. The district of Florence was not then much larger than Middlesex.

f G. Villani, l. xi. c. 49.

g C. 93. Troviamo diligentemente, che in questi tempi avea in Firenze circa a 25 mila uomini da portare arme da 15 in 70 anni—Stimavasi avere in Firenze da 90 mila bocche tra uomini e femine e fanciulli, per l' avviso del pane bisognava al continuo alla città. These proportions of 25,000 men between fifteen and seventy, and of 90,000 souls, are as nearly as possible consonant to modern calculation, of which Villani knew nothing, which confirms his accuracy; though M. Sismondi asserts, p. 369, that the city contained 150,000 inhabitants, on no better authority, as far as appears, than that of Boccaccio, who says that 100,000 perished in the great plague of 1348, which was generally supposed to destroy two out of three. But surely two vague suppositions are not to be combined, in order to overthrow such testimony as that of Villani, who seems to have consulted all registers and other authentic documents in his reach.

What Villani says of the population of the district may lead us to reckon it, perhaps, at about 180,000 souls, allowing the baptisms to be one in thirty of the population. Ragionavasi in questi tempi avere nel contado e distretto di Firenze de 80 mila uomini. Troviamo del piovano, che battezzava i fanciulli, imperoche per ogni maschio, che battezzava in San Giovanni, per avere il novero, metea una fava nera, e per ogni femina una bianca, trovò, ch' erano l' anno in questi tempi dalle 5,800 in sei mila, avanzando le più volte il sesso masculino da 300 in 500 per anno. Baptisms could only be performed in one public font, at Florence, Pisà, and some other cities. The building that contained this font was called the Baptistery. The baptisteries of Florence and Pisa still remain, and are well known. Du Cange, v. Baptisterium. But there were fifty-seven parishes and one hundred and ten churches within the city. Villani, ibid. Mr. Roscoe has published a manuscript, evidently written after the taking of Pisa in 1406, though, as I should guess, not long after that event, containing a proposition for an income-tax of ten per cent. throughout the Florentine dominions. Among its other calculations, the population is reckoned at 400,000; assuming that to be the proportion to 80,000 men of military age, though certainly beyond the mark. It is singular that the district of Florence in 1343 is estimated by Villani to contain as great a number before Pisa, Volterra, or even Prato and Pistoja, had been annexed to it.—Roscoe's Life of Lorenzo. Appendix, No. 16.

Several noble families of Pisa, who had defrayed the chief cost of this expedition, shared the island in districts, which they held in fief of the republic.[h] At a later period the Balearic isles were subjected, but not long retained, by Pisa. Her naval prowess was supported by her commerce. A writer of the twelfth century reproaches her with the Jews, the Arabians, and other "monsters of the sea," who thronged in her streets.[i] The crusades poured fresh wealth into the lap of the maritime Italian cities. In some of those expeditions a great portion of the armament was conveyed by sea to Palestine, and freighted the vessels of Pisa, Genoa, and Venice. When the Christians had bought with their blood the sea-coast of Syria, these republics procured the most extensive privileges in the new states that were formed out of their slender conquests, and became the conduits through which the produce of the East flowed in upon the ruder nations of Europe. Pisa maintained a large share of this commerce, as well as of maritime greatness, till near the end of the thirteenth century. In 1282, we are told by Villani, she was in great power, possessing Sardinia, Corsica, and Elba, from whence the republic, as well as private persons, derived large revenues, and almost ruled the sea with their ships and merchandises, and beyond sea were very powerful in the city of Acre, and much connected with its principal citizens.[j] The prosperous era of Pisa is marked by her public edifices. She was the first Italian city that took a pride in architectural magnificence. Her cathedral is of the eleventh century; the baptistery, the famous inclined tower, or belfry, the arcades that surround the Campo Santo, or cemetery of Pisa, are of the twelfth, or, at latest, of the thirteenth.[k]

It would have been no slight anomaly in the annals of Italy, or, we might say, of mankind, if two neighboring cities, competitors in every mercantile occupation and every naval enterprise, had not been perpetual enemies to each other. One is more surprised, if the fact be true, that no war broke out between Pisa and Genoa till 1119.[l] From this time at least they continually recurred. An equality of forces and of courage

[h] Sismondi, t. i. pp. 345, 372.

[i] Qui pergit Pisas, videt illic monstra marina;
Hæc urbs, Paganis, Turchis, Libycis quoque, Parthis,
Sordida; Chaldæi sua lustrant mœnia tetri.
Donizo, Vita Comitissæ Mathildis apud Muratori, Dissert. 31.

[j] Villani, l. vi. c. 83.

[k] Sismondi, t. iv. p. 178; Tiraboschi, t. iii. p. 406.

[l] Muratori, ad ann. 1119.

kept the conflict uncertain for the greater part of two centuries. Their battles were numerous, and sometimes, taken separately, decisive; but the public spirit and resources of each city were called out by defeat, and we generally find a new armament replacing the losses of an unsuccessful combat. In this respect the naval contest between Pisa and Genoa, though much longer protracted, resembles that of Rome and Carthage in the first Punic war. But Pisa was reserved for her Ægades. In one fatal battle, off the little isle of Meloria, in 1284, her whole navy was destroyed. Several unfortunate and expensive armaments had almost exhausted the state, and this was the last effort, by private sacrifices, to equip one more fleet. After this defeat it was in vain to contend for empire. Eleven thousand Pisans languished for many years in prison; it was a current saying that whoever would see Pisa should seek her at Genoa. A treacherous chief, that Count Ugolino whose guilt was so terribly avenged, is said to have purposely lost the battle, and prevented the ransom of the captives, to secure his power: accusations that obtain easy credit with an unsuccessful people.

From the epoch of the battle of Meloria, Pisa ceased to be a maritime power. Forty years afterwards she was stripped of her ancient colony, the island of Sardinia. The four Pisan families who had been invested with that conquest had been apt to consider it as their absolute property; their appellation of judge seemed to indicate deputed power, but they sometimes assumed that of king, and several attempts had been made to establish an immediate dependence on the empire, or even on the pope. A new potentate had now come forward on the stage. The malcontent feudatories of Sardinia made overtures to the king of Aragon, who had no scruples about attacking the indisputable possession of a declining republic. Pisa made a few unavailing efforts to defend Sardinia; but the nominal superiority was hardly worth a contest, and she surrendered her rights to the crown of Aragon. Her commerce now dwindled with her greatness. During the fourteenth century Pisa almost renounced the ocean and directed her main attention to the politics of Tuscany. Ghibelin by invariable predilection, she was in constant opposition to the Guelf cities which looked up to Florence. But in the fourteenth century the names of freeman and Ghibelin were not easily united; and a city in that interest stood insulated between the republics of an opposite

faction and the tyrants of her own. Pisa fell several times under the yoke of usurpers; she was included in the wide-spreading acquisitions of Gian Galeazzo Visconti. At his death one of his family seized the dominion, and finally the Florentines purchased for 400,000 florins a rival and once equal city. The Pisans made a resistance more according to what they had been than what they were.

The early history of Genoa, in all her foreign relations, is involved in that of Pisa. As allies against the Saracens of Africa, Spain, and the Mediterranean islands, as corrivals in commerce with these very Saracens or with the Christians of the East, as co-operators in the great expeditions under the banner of the cross, or as engaged in deadly warfare with each other, the two republics stand in continual parallel. From the beginning of the thirteenth century Genoa was, I think, the more prominent and flourishing of the two. She had conquered the island of Corsica at the same time that Pisa reduced Sardinia; and her acquisition, though less considerable, was longer preserved. Her territory at home, the ancient Liguria, was much more extensive, and, what was most important, contained a greater range of sea-coast than that of Pisa. But the commercial and maritime prosperity of Genoa may be dated from the recovery of Constantinople by the Greeks in 1261. Jealous of the Venetians, by whose arms the Latin emperors had been placed, and were still maintained, on their throne, the Genoese assisted Palæologus in overturning that usurpation. They obtained in consequence the suburb of Pera or Galata, over against Constantinople, as an exclusive settlement, where their colony was ruled by a magistrate sent from home, and frequently defied the Greek capital with its armed galleys and intrepid seamen. From this convenient station Genoa extended her commerce into the Black Sea, and established her principal factory at Caffa, in the Crimean peninsula. This commercial monopoly, for such she endeavored to render it, aggravated the animosity of Venice. As Pisa retired from the field of waters, a new enemy appeared upon the horizon to dispute the maritime dominion of Genoa. Her first war with Venice was in 1258. The second was not till after the victory of Meloria had crushed her more ancient enemy. It broke out in 1293, and was prosecuted with determined fury and a great display of naval strength on both sides. One Genoese arma-

ment, as we are assured by an historian, consisted of one hundred and fifty-five galleys, each manned with from two hundred and twenty to three hundred sailors;[m] a force astonishing to those who know the more slender resources of Italy in modern times, but which is rendered credible by several analogous facts of good authority. Genoa was, however, beyond any other exertion. The usual fleets of Genoa and Venice were of seventy to ninety galleys.

Perhaps the naval exploits of these two republics may afford a more interesting spectacle to some minds than any other part of Italian history. Compared with military transactions of the same age, they are more sanguinary, more brilliant, and exhibit full as much skill and intrepidity. But maritime warfare is scanty in circumstances, and the indefiniteness of its locality prevents it from resting in the memory. And though the wars of Genoa and Venice were not always so unconnected with territorial politics as those of the former city with Pisa, yet, from the alternation of success and equality of forces, they did not often produce any decisive effect. One memorable encounter in the Sea of Marmora, where the Genoese fought and conquered single-handed against the Venetians, the Catalans, and the Greeks, hardly belongs to Italian history.[n]

But the most remarkable war, and that productive of the greatest consequences, was one that commenced in 1378, after several acts of hostility in the Levant, wherein the Venetians appear to have been the principal aggressors. Genoa did not stand alone in this war. A formidable confederacy was raised against Venice, who had given provocation to many enemies. Of this Francis Carrara, signior of Padua, and the king of Hungary were the leaders. But the principal struggle was, as usual, upon the waves. During the winter of 1378 a Genoese fleet kept the sea, and ravaged the shores of Dalmatia. The Venetian armament had been weakened by an epidemic disease, and when Vittor Pisani, their admiral, gave battle to the enemy, he was compelled to fight with a hasty conscription of landsmen against the best sailors in the world. Entirely defeated, and taking refuge at Venice with only seven galleys, Pisani was cast into prison, as if his ill fortune had been his crime. Meanwhile the Genoese fleet, augmented by a strong reinforcement, rode before the long natural ramparts that separate the lagunes

m Muratori, A.D. 1295. *n* Gibbon, c. 63.

of Venice from the Adriatic. Six passages intersect the islands which constitute this barrier, besides the broader outlets of Brondolo and Fossone, through which the waters of the Brenta and the Adige are discharged. The lagune itself, as is well known, consists of extremely shallow water, unnavigable for any vessel except along the course of artificial and intricate passages. Notwithstanding the apparent difficulties of such an enterprise, Pietro Doria, the Genoese admiral, determined to reduce the city. His first successes gave him reason to hope. He forced the passage, and stormed the little town of Chioggia,[o] built upon the inside of the isle bearing that name, about twenty-five miles south of Venice. Nearly four thousand prisoners fell here into his hands: an augury, as it seemed, of a more splendid triumph. In the consternation this misfortune inspired at Venice the first impulse was to ask for peace. The ambassadors carried with them seven Genoese prisoners, as a sort of peace-offering to the admiral, and were empowered to make large and humiliating concessions, reserving nothing but the liberty of Venice. Francis Carrara strongly urged his allies to treat for peace. But the Genoese were stimulated by long hatred, and intoxicated by this unexpected opportunity of revenge. Doria, calling the ambassadors into council, thus addressed them: "Ye shall obtain no peace from us, I swear to you, nor from the lord of Padua, till first we have put a curb in the mouths of those wild horses that stand upon the place of St. Mark. When they are bridled you shall have enough of peace. Take back with you your Genoese captives, for I am coming within a few days to release both them and their companions from your prisons." When this answer was reported to the senate, they prepared to defend themselves with the characteristic firmness of their government. Every eye was turned towards a great man unjustly punished, their Admiral Vittor Pisani. He was called out of prison to defend his country amidst general acclamations; but, equal in magnanimity and simple republican patriotism to the noblest characters of antiquity, Pisani repressed the favoring voices of the multitude, and bade them reserve their enthusiasm for St. Mark, the symbol and war-cry of Venice. Under the vigorous command of Pisani the canals were fortified or occupied by large vessels

o Chioggia, known at Venice by the name of Chioza, according to the usage of the Venetian dialect, which changes the *g* into *z*.

armed with artillery; thirty-four galleys were equipped; every citizen contributed according to his power; in the entire want of commercial resources (for Venice had not a merchant-ship during this war) private plate was melted; and the senate held out the promise of ennobling thirty families who should be most forward in this strife of patriotism.

The new fleet was so ill provided with seamen that for some months the admiral employed them only in manœuvring along the canals. From some unaccountable supineness, or more probably from the insuperable difficulties of the undertaking, the Genoese made no assault upon the city. They had, indeed, fair grounds to hope its reduction by famine or despair. Every access to the continent was cut off by the troops of Padua; and the king of Hungary had mastered almost all the Venetian towns in Istria and along the Dalmatian coast. The Doge Contarini, taking the chief command, appeared at length with his fleet near Chioggia, before the Genoese were aware. They were still less aware of his secret design. He pushed one of the large round vessels, then called *cocche*, into the narrow passage of Chioggia which connects the lagune with the sea, and, mooring her athwart the channel, interrupted that communication. Attacked with fury by the enemy, this vessel went down on the spot, and the doge improved his advantage by sinking loads of stones until the passage became absolutely unnavigable. It was still possible for the Genoese fleet to follow the principal canal of the lagune towards Venice and the northern passages, or to sail out of it by the harbor of Brondolo; but, whether from confusion or from miscalculating the dangers of their position, they suffered the Venetians to close the canal upon them by the same means they had used at Chioggia, and even to place their fleet in the entrance of Brondolo so near to the lagune that the Genoese could not form their ships in line of battle. The circumstances of the two combatants were thus entirely changed. But the Genoese fleet, though besieged in Chioggia, was impregnable, and their command of the land secured them from famine. Venice, notwithstanding her unexpected success, was still very far from secure; it was difficult for the doge to keep his position through the winter; and if the enemy could appear in open sea, the risks of combat were extremely hazardous. It is said that the senate deliberated upon transporting the seat of their liberty to Candia, and that

the doge had announced his intention to raise the siege of Chioggia, if expected succors did not arrive by the 1st of January, 1380. On that very day Carlo Zeno, an admiral who, ignorant of the dangers of his country, had been supporting the honor of her flag in the Levant and on the coast of Liguria, appeared with a reinforcement of eighteen galleys and a store of provisions. From that moment the confidence of Venice revived. The fleet, now superior in strength to the enemy, began to attack them with vivacity. After several months of obstinate resistance the Genoese, whom their republic had ineffectually attempted to relieve by a fresh armament, blocked up in the town of Chioggia, and pressed by hunger, were obliged to surrender. Nineteen galleys only out of forty-eight were in good condition; and the crews were equally diminished in the ten months of their occupation of Chioggia. The pride of Genoa was deemed to be justly humbled; and even her own historian confesses that God would not suffer so noble a city as Venice to become the spoil of a conqueror.[p]

Each of the two republics had sufficient reason to lament their mutual prejudices, and the selfish cupidity of their merchants, which usurps in all maritime countries the name of patriotism. Though the capture of Chioggia did not terminate the war, both parties were exhausted, and willing, next year, to accept the mediation of the Duke of Savoy. By the peace of Turin, Venice surrendered most of her territorial possessions to the king of Hungary. That prince and Francis Carrara were the only gainers. Genoa obtained the isle of Tenedos, one of the original subjects of dispute; a poor indemnity for her losses. Though, upon a hasty view, the result of this war appears more unfavorable to Venice, yet in fact it is the epoch of the decline of Genoa. From this time she never commanded the ocean with such navies as before; her commerce gradually went into decay; and the fifteenth century, the most splendid in the annals of Venice, is, till recent times, the most ignominious in those of Genoa. But this was partly owing to internal dissensions, by which her liberty, as well as glory, was for a while suspended.

At Genoa, as in other cities of Lombardy, the principal mag-

[p] G. Stella, Annales Genuenses; Gataro, Istoria Padovana. Both these contemporary works, of which the latter gives the best relation, are in the seventeenth volume of Muratori's collection. Sismondi's narrative is very clear and spirited.—Hist. des Républ. Ital. t. vii. pp. 205-232.

istrates of the republic were originally styled consuls. A chronicle drawn up under the inspection of the senate perpetuates the names of these early magistrates. It appears that their number varied from four to six, annually elected by the people in their full parliament. These consuls presided over the republic and commanded the forces by land and sea; while another class of magistrates, bearing the same title, were annually elected by the several companies into which the people were divided, for the administration of civil justice.[q] This was the regimen of the twelfth century; but in the next Genoa fell into the fashion of intrusting the executive power to a foreign podestà. The podestà was assisted by a council of eight, chosen by the eight companies of nobility. This institution, if indeed it were anything more than a custom or usurpation, originated probably not much later than the beginning of the thirteenth century. It gave not only an aristocratic, but almost an oligarchical character to the constitution, since many of the nobility were not members of these eight societies. Of the senate or councils we hardly know more than their existence; they are very little mentioned by historians. Everything of a general nature, everything that required the expression of public will, was reserved for the entire and unrepresented sovereignty of the people. In no city was the parliament so often convened; for war, for peace, for alliance, for change of government.[r] These very dissonant elements were not likely to harmonize. The people, sufficiently accustomed to the forms of democracy to imbibe its spirit, repined at the practical influence which was thrown into the scale of the nobles. Nor did some of the latter class scruple to enter that path of ambition which leads to power by flattery of the populace. Two or three times within the thirteenth century a high-born demagogue had nearly overturned the general liberty, like the Torriani at Milan, through the pretence of defending that of individuals.[s] Among the nobility themselves four houses were distinguished beyond all the rest —the Grimaldi, the Fieschi, the Doria, the Spinola; the two former of Guelf politics, the latter adherents of the empire.[t] Perhaps their equality of forces, and a jealousy which even the families of the same faction entertained of each other, prevented any one from usurping the signiory at Genoa. Neither the

q Sismondi, t. i. p. 353.
r Id. p. 324.
s Id. t. iii. p. 319.
t Id. t. iii. p. 328.

Guelf nor Ghibelin party obtaining a decided preponderance, continual revolutions occurred in the city. The most celebrated was the expulsion of the Ghibelins under the Doria and Spinola in 1318. They had recourse to the Visconti of Milan, and their own resources were not unequal to cope with their country. The Guelfs thought it necessary to call in Robert King of Naples, always ready to give assistance as the price of dominion, and conferred upon him the temporary sovereignty of Genoa. A siege of several years' duration, if we believe an historian of that age, produced as many remarkable exploits as that of Troy. They have not proved so interesting to posterity. The Ghibelins continued for a length of time excluded from the city, but in possession of the seaport of Savona, whence they traded and equipped fleets, as a rival republic, and even entered into a separate war with Venice.[u] Experience of the uselessness of hostility, and the loss to which they exposed their common country, produced a reconciliation, or rather a compromise, in 1331, when the Ghibelins returned to Genoa. But the people felt that many years of misfortune had been owing to the private enmities of four overbearing families. An opportunity soon offered of reducing their influence within very narrow bounds.

The Ghibelin faction was at the head of affairs in 1339, a Doria and a Spinola being its leaders, when the discontent of a large fleet in want of pay broke out in open insurrection. Savona and the neighboring towns took arms avowedly against the aristocratical tyranny; and the capital was itself on the point of joining the insurgents. There was, by the Genoese constitution, a magistrate named the abbot of the people, acting as a kind of tribune for their protection against the oppression of the nobility. His functions are not, however, in any book I have seen, very clearly defined. This office had been abolished by the present government, and it was the first demand of the malcontents that it should be restored. This was acceded to, and twenty delegates were appointed to make the choice. While they delayed, and the populace was grown weary with waiting, a nameless artisan called out from an elevated station that he could direct them to a fit person. When the people, in jest, bade him speak on, he uttered the name of Simon Boccanegra. This was a man of noble birth, and well esteemed,

[u] Villani, l. ix. passim.

who was then present among the crowd. The word was suddenly taken up, a cry was heard that Boccanegra should be abbot; he was instantly brought forward, and the sword of justice forced into his hand. As soon as silence could be obtained he modestly thanked them for their favor, but declined an office which his nobility disqualified him from exercising. At this a single voice out of the crowd exclaimed, "*Signior!*" and this title was reverberated from every side. Fearful of worse consequences, the actual magistrates urged him to comply with the people and accept the office of abbot. But Boccanegra, addressing the assembly, declared his readiness to become their abbot, signior, or whatever they would. The cry of "Signior!" was now louder than before; while others cried out, "Let him be duke!" The latter title was received with greater approbation; and Boccanegra was conducted to the palace, the first duke, or doge, of Genoa.*v*

Caprice alone, or an idea of more pomp and dignity, led the populace, we may conjecture, to prefer this title to that of signior; but it produced important and highly beneficial consequences. In all neighboring cities an arbitrary government had been already established under their respective signiors; the name was associated with indefinite power, while that of doge had only been taken by the elective and very limited chief magistrate of another maritime republic. Neither Boccanegra nor his successors ever rendered their authority unlimited or hereditary. The constitution of Genoa, from an oppressive aristocracy, became a mixture of the two other forms, with an exclusion of the nobles from power. Those four great families who had domineered alternately for almost a century lost their influence at home after the revolution of 1339. Yet, what is remarkable enough, they were still selected in preference for the highest of trusts; their names are still identified with the glory of Genoa; her fleets hardly sailed but under a Doria, a Spinola, or a Grimaldi; such confidence could the republic bestow upon their patriotism, or that of those whom they commanded. Meanwhile two or three new families, a plebeian oligarchy, filled their place in domestic honors; the Adorni, the Fregosi, the Montalti, contended for the ascendant. From their competition ensued revolutions too numerous almost for a separate history; in four years, from 1390 to 1394, the doge was ten

v G. Stella. Annal. Genuenses, in Script. Rer. Ital. t. xvii. p. 1072.

times changed; swept away or brought back in the fluctuations of popular tumult. Antoniotto Adorno, four times doge of Genoa, had sought the friendship of Gian Galeazzo Visconti; but that crafty tyrant meditated the subjugation of the republic, and played her factions against one another to render her fall secure. Adorno perceived that there was no hope for ultimate independence but by making a temporary sacrifice of it. His own power, ambitious as he had been, he voluntarily resigned, and placed the republic under the protection or signiory of the king of France. Terms were stipulated very favorable to her liberties; but, with a French garrison once received into the city, they were not always sure of observance.[w]

While Genoa lost even her political independence, Venice became more conspicuous and powerful than before. That famous republic deduces its origin, and even its liberty, from an era beyond the commencement of the middle ages. The Venetians boast of a perpetual emancipation from the yoke of barbarians. From that ignominious servitude some natives, or, as their historians will have it, nobles, of Aquileja and neighboring towns,[x] fled to the small cluster of islands that rise amidst the shoals at the mouth of the Brenta. Here they built the town of Rivoalto, the modern Venice, in 421; but their chief settlement was, till the beginning of the ninth century, at Malamocco. A living writer has, in a passage of remarkable eloquence, described the sovereign republic, immovable upon the bosom of the waters from which her palaces emerge, contemplating the successive tides of continental invasion, the rise and fall of empires, the change of dynasties, the whole moving scene of human revolution, till, in her own turn, the last surviving witness of antiquity, the common link between two periods of civilization, has submitted to the destroying hand of time.[y] Some part of this renown must, on a cold-blooded scrutiny, be detracted from Venice. Her independence was, at the best, the fruit of her obscurity. Neglected upon their islands, a people of fishermen might without molestation elect their own magistrates; a very equivocal proof of sovereignty in cities much more considerable than Venice. But both the western and the eastern empire alternately pretended to exercise dominion over her; she was conquered by Pepin, son of Charlemagne, and restored by

[w] Sismondi, t. vii. pp. 237, 367.

[x] Ebbe principio, says Sanuto haughtily, non da pastori, come ebbe Roma, ma da potenti, e nobili.

[y] Sismondi, t. i. p. 309.

him, as the chronicles say, to the Greek Emperor Nicephorus. There is every appearance that the Venetians had always considered themselves as subject, in a large sense not exclusive of their municipal self-government, to the eastern empire.[z] And this connection was not broken, in the early part, at least, of the tenth century. But, for every essential purpose, Venice might long before be deemed an independent state. Her doge was not confirmed at Constantinople; she paid no tribute, and lent no assistance in war. Her own navies, in the ninth century, encountered the Normans, the Saracens, and the Sclavonians in the Adriatic Sea. Upon the coast of Dalmatia were several Greek cities, which the empire had ceased to protect, and which, like Venice itself, became republics for want of a master. Ragusa was one of these, and, more fortunate than the rest, survived as an independent city till our own age. In return for the assistance of Venice, these little seaports put themselves under her government; the Sclavonian pirates were repressed; and after acquiring, partly by consent, partly by arms, a large tract of maritime territory, the doge took the title of Duke of Dalmatia, which is said by Dandolo to have been confirmed at Constantinople. [A.D. 997.] Three or four centuries, however, elapsed before the republic became secure of these conquests, which were frequently wrested from her by rebellions of the inhabitants, or by her powerful neighbor, the king of Hungary.

A more important source of Venetian greatness was commerce. In the darkest and most barbarous period, before Genoa or even Pisa had entered into mercantile pursuits, Venice carried on an extensive traffic both with the Greek and Saracen regions of the Levant. The crusades enriched and aggrandized Venice more, perhaps, than any other city. Her splendor may, however, be dated from the taking of Constantinople by the Latins in 1204. In this famous enterprise, which diverted a great armament destined for the recovery of Jeru-

z Nicephorus stipulates with Charlemagne for his faithful city of Venice. Quæ in devotione imperii illibatee steterant. Danduli Chronicon, in Muratori, Script. Rer. Ital. t. xii. p. 156. In the tenth century Constantine Porphyrogenitus, in his book De Administratione Imperii, claims the Venetians as his subjects, though he admits that they had, for peace' sake, paid tribute to Pepin and his successors as kings of Italy, p. 71. I have not read the famous Squittinio della libertà Veneta, which gave the republic so much offence in the seventeenth century; but a very strong case is made out against their early independence in Giannone's history, t. ii. p. 283, edit. Haia, 1753. Muratori informs us that so late as 1084 the doge obtained the title of Imperialis Protosevastos from the court of Constantinople; a title which he continued always to use. (Annali d' Italia, ad ann.) But I should lay no stress on this circumstance. The Greek, like the German emperors in modern times, had a mint of specious titles which passed for ready money over Christendom.

salem, the French and Venetian nations were alone engaged; but the former only as private adventurers, the latter with the whole strength of their republic under its doge Henry Dandolo. Three-eighths of the city of Constantinople, and an equal proportion of the provinces, were allotted to them in the partition of the spoil, and the doge took the singular but accurate title, Duke of three-eighths of the Roman empire. Their share was increased by purchases from less opulent crusaders, especially one of much importance, the island of Candia, which they retained till the middle of the seventeenth century. These foreign acquisitions were generally granted out in fief to private Venetian nobles under the supremacy of the republic.[a] It was thus that the Ionian islands, to adopt the vocabulary of our day, came under the dominion of Venice, and guaranteed that sovereignty which she now began to affect over the Adriatic. Those of the Archipelago were lost in the sixteenth century. This political greatness was sustained by an increasing commerce. No Christian state preserved so considerable an intercourse with the Mohammedans. While Genoa kept the keys of the Black Sea by her colonies of Pera and Caffa, Venice directed her vessels to Acre and Alexandria. These connections, as is the natural effect of trade, deadened the sense of religious antipathy; and the Venetians were sometimes charged with obstructing all efforts towards a new crusade, or even any partial attacks upon the Mohammedan nations.

The earliest form of government at Venice, as we collect from an epistle of Cassiodorus in the sixth century, was by twelve annual tribunes. Perhaps the union of the different islanders was merely federative. However, in 697, they resolved to elect a chief magistrate by name of duke, or, in their dialect, doge of Venice. No councils appear to have limited his power, or represented the national will. The doge was general and judge; he was sometimes permitted to associate his son with him, and thus to prepare the road for hereditary power; his government had all the prerogatives, and, as far as in such a state of manners was possible, the pomp, of a monarchy. But he acted in important matters with the concurrence of a general assembly, though, from the want of positive restraints, his executive government might be considered as nearly absolute. Time, however, demonstrated to the Vene-

a Sismondi, t. ii. p. 431.

tians the imperfections of such a constitution. Limitations were accordingly imposed on the doge in 1032; he was prohibited from associating a son in the government, and obliged to act with the consent of two elected counsellors, and, on important occasions, to call in some of the principal citizens. No other change appears to have taken place till 1172, long after every other Italian city had provided for its liberty by constitutional laws, more or less successful, but always manifesting a good deal of contrivance and complication. Venice was, however, dissatisfied with her existing institutions. General assemblies were found, in practice, inconvenient and unsatisfactory. Yet some adequate safeguard against a magistrate of indefinite powers was required by freemen. A representative council, as in other republics, justly appeared the best innovation that could be introduced.[b]

The great council of Venice, as established in 1172, was to consist of four hundred and eighty citizens, equally taken from the six districts of the city, and annually renewed. But the election was not made immediately by the people. Two electors, called tribunes, from each of the six districts, appointed the members of the council by separate nomination. These tribunes at first were themselves chosen by the people, so that the intervention of this electoral body did not apparently trespass upon the democratical character of the constitution. But the great council, principally composed of men of high birth, and invested by the law with the appointment of the doge, and of all the councils of magistracy, seem, early in the thirteenth century, to have assumed the right of naming their own constituents. Besides appointing the tribunes, they took upon themselves another privilege, that of confirming or rejecting their successors before they resigned their functions. These usurpations rendered the annual election almost nugatory; the same members were usually renewed; and though the dignity of councillor was not yet hereditary, it remained, upon the whole, in the same families. In this transitional state the Venetian government continued during the thirteenth century; the people actually debarred of power, but an hereditary aristocracy

b Sismondi, t. iii. p. 287. As I have never read the Storia civile Veneta by Vettor Sandi, in nine vols. 4to, or even Laugier's History of Venice, my reliance has chiefly been placed on M. Sismondi, who has made use of Sandi, the latest, and probably the most accurate, historian. To avoid frequent reference, the principal passages in Sismondi relative to the domestic revolutions of Venice are t. i. p. 323, t. iii. pp. 287-300, t. iv. pp. 349-370. The history of Daru had not been published when this was written.

not completely or legally confirmed. The right of electing, or rather of re-electing, the great council was transferred, in 1297, from the tribunes, whose office was abolished, to the council of forty; they ballotted upon the names of the members who already sat; and whoever obtained twelve favoring balls out of forty retained his place. The vacancies occasioned by rejection or death were filled up by a supplemental list formed by three electors nominated in the great council. But they were expressly prohibited, by laws of 1298 and 1300, from inserting the name of any one whose paternal ancestors had not enjoyed the same honor. Thus an exclusive hereditary aristocracy was finally established. And the personal rights of noble descent were rendered complete in 1319 by the abolition of all elective forms. By the constitution of Venice as it was then settled, every descendant of a member of the great council, on attaining twenty-five years of age, entered as of right into that body, which, of course, became unlimited in its numbers.*c*

But an assembly so numerous as the great council, even before it was thus thrown open to all the nobility, could never have conducted the public affairs with that secrecy and steadiness which were characteristic of Venice; and without an intermediary power between the doge and the patrician multitude the constitution would have gained nothing in stability to compensate for the loss of popular freedom. The great council had proceeded very soon after its institution to limit the ducal prerogatives. That of exercising criminal justice, a trust of vast importance, was transferred in 1179 to a council of forty members annually chosen. The executive government itself was thought too considerable for the doge without some material limitations. Instead of naming his own assistants or pregadi, he was only to preside in a council of sixty members, to whom the care of the state in all domestic and foreign relations, and the previous deliberation upon proposals submitted to the great council, was confided. This council of pregadi, generally called in later times the senate, was enlarged in the fourteenth cen-

c These gradual changes between 1297 and 1319 were first made known by Sandi, from whom M. Sismondi has introduced the facts into his own history. I notice this, because all former writers, both ancient and modern, fix the complete and final establishment of the Venetian aristocracy in 1297.

Twenty-five years complete was the statutable age at which every Venetian noble had a right to take his seat in the great council. But the names of those who had passed the age of twenty were annually put into an urn, and one fifth drawn out by lot, who were thereupon admitted. On an average, therefore, the age of admission was about twenty-three. Janotus de Rep. Venet.— Contarini.—Amelot de la Houssaye.

tury by sixty additional members; and as a great part of the magistrates had also seats in it, the whole number amounted to between two and three hundred. Though the legislative power, properly speaking, remained with the great council, the senate used to impose taxes, and had the exclusive right of making peace and war. It was annually renewed, like almost all other councils at Venice, by the great council. But since even this body was too numerous for the preliminary discussion of business, six councillors, forming, along with the doge, the signiory, or visible representative of the republic, were empowered to dispatch orders, to correspond with ambassadors, to treat with foreign states, to convoke and preside in the councils, and perform other duties of an administration. In part of these they were obliged to act with the concurrence of what was termed the college, comprising, besides themselves, certain select councillors, from different constituted authorities.[d]

It might be imagined that a dignity so shorn of its lustre as that of doge would not excite an overweening ambition. But the Venetians were still jealous of extinguished power; and while their constitution was yet immature, the great council planned new methods of restricting their chief magistrate. An oath was taken by the doge on his election, so comprehensive as to embrace every possible check upon undue influence. He was bound not to correspond with foreign states, or to open their letters, except in the presence of the signiory; to acquire no property beyond the Venetian dominions, and to resign what he might already possess; to interpose, directly or indirectly, in no judicial process; and not to permit any citizen to use tokens of subjection in saluting him. As a further security, they devised a remarkably complicated mode of supplying the vacancy of his office. Election by open suffrage is always liable to tumult or corruption; nor does the method of secret ballot, while it prevents the one, afford in practice any adequate security against the other. Election by lot incurs the risk of placing incapable persons in situations of arduous trust. The Venetian scheme was intended to combine the two modes without their evils, by leaving the absolute choice of their doge to

d The college of Savj consisted of sixteen persons; and it possessed the initiative in all public measures that required the assent of the senate. For no single senator, much less any noble of the great council, could propose anything for debate. The signiory had the same privilege. Thus the virtual powers even of the senate were far more limited than they appear at first sight; and no possibility remained of innovation in the fundamental principles of the constitution.

electors taken by lot. It was presumed that, among a competent number of persons, though taken promiscuously, good sense and right principles would gain such an ascendency as to prevent any flagrantly improper nomination, if undue influence could be excluded. For this purpose the ballot was rendered exceedingly complicated, that no possible ingenuity or stratagem might ascertain the electoral body before the last moment. A single lottery, if fairly conducted, is certainly sufficient for this end. At Venice as many balls as there were members of the great council present were placed in an urn. Thirty of these were gilt. The holders of gilt balls were rendered by a second ballot to nine. The nine elected forty, whom lot reduced to twelve. The twelve chose twenty-five by separate nomination.[e] The twenty-five were reduced by lot to nine; and each of the nine chose five. These forty-five were reduced to eleven as before; the eleven elected forty-one, who were the ultimate voters for a doge. This intricacy appears useless, and consequently absurd; but the original principle of a Venetian election (for something of the same kind was applied to all their councils and magistrates) may not always be unworthy of imitation. In one of our best modern statutes, that for regulating the trials of contested elections, we have seen this mixture of chance and selection very happily introduced.[f]

An hereditary prince could never have remained quiet in such trammels as were imposed upon the doge of Venice. But early prejudice accustoms men to consider restraint, even upon themselves, as advantageous; and the limitations of ducal power appeared to every Venetian as fundamental as the great laws of the English constitution do to ourselves. Many doges of Venice, especially in the middle ages, were considerable men; but they were content with the functions assigned to them, which, if they could avoid the tantalizing comparison of sovereign princes, were enough for the ambition of republicans. For life the chief magistrates of their country, her noble citizens forever, they might thank her in their own name for what she gave, and in that of their posterity for what she withheld. Once only a doge of Venice was tempted to betray the freedom of

e Amelot de la Houssaye asserts this: but, according to Contarini, the method was by ballot.

f This was written about 1810. The statute to which I allude grew out of favor afterwards. But there is too much reason to doubt whether grosser instances of partial or unjust, or at best erroneous, determination have not taken place since a new tribunal was erected, than could be imputed to the celebrated Grenville Act. [1850.]

the republic [A.D. 1355]. Marin Falieri, a man far advanced in life, engaged, from some petty resentment, in a wild intrigue to overturn the government. The conspiracy was soon discovered, and the doge avowed his guilt. An aristocracy so firm and so severe did not hesitate to order his execution in the ducal palace.

For some years after what was called the closing of the great council by the law of 1296, which excluded all but the families actually in possession, a good deal of discontent showed itself among the commonalty. Several commotions took place about the beginning of the fourteenth century, with the object of restoring a more popular regimen. Upon the suppression of the last, in 1310, the aristocracy sacrificed their own individual freedom, along with that of the people, to the preservation of an imaginary privilege. They established the famous council of ten, that most remarkable part of the Venetian constitution. This council, it should be observed, consisted in fact of seventeen, comprising the signiory, or the doge and his six councillors, as well as the ten properly so called. The council of ten had by usage, if not by right, a controlling and dictatorial power over the senate and other magistrates, rescinding their decisions, and treating separately with foreign princes. Their vast influence strengthened the executive government, of which they formed a part, and gave a vigor to its movements which the jealousy of the councils would possibly have impeded. But they are chiefly known as an arbitrary and inquisitorial tribunal, the standing tyranny of Venice. Excluding the old council of forty, a regular court of criminal judicature, not only from the investigation of treasonable charges but of several other crimes of magnitude, they inquired, they judged, they punished, according to what they called reason of state. The public eye never penetrated the mystery of their proceedings; the accused was sometimes not heard, never confronted with witnesses; the condemnation was secret as the inquiry, the punishment undivulged like both.[g] The terrible and odious machinery of a police, the insidious spy, the stipendiary informer, unknown to the carelessness of feudal governments, found their natural soil in the republic of Venice. Tumultuous assemblies were scarcely possible in so peculiar a city; and private conspiracies

[g] Illum etiam morem observant, ne reum, cum de eo judicium laturi sunt, in collegium admittant, neque cognitorem, aut oratorem quempiam, qui ejus causam agat. Contarini de Rep. Venet.

never failed to be detected by the vigilance of the council of ten. Compared with the Tuscan republics the tranquillity of Venice is truly striking. The names of Guelf and Ghibelin hardly raised any emotion in her streets, though the government was considered in the first part of the fourteenth century as rather inclined towards the latter party.[h] But the wildest excesses of faction are less dishonoring than the stillness and moral degradation of servitude.[i]

It was a very common theme with political writers till about the beginning of the last century, when Venice fell almost into oblivion, to descant upon the wisdom of this government. And, indeed, if the preservation of ancient institutions be, as some appear to consider it, not a means but an end, and an end for which the rights of man and laws of God may at any time be set aside, we must acknowledge that it was a wisely constructed system. Formed to compress the two opposite forces from which resistance might be expected, it kept both the doge and the people in perfect subordination. Even the coalition of an executive magistrate with the multitude, so fatal to most aristocracies, never endangered that of Venice. It is most remarkable that a part of the constitution which destroyed every man's security, and incurred general hatred, was still maintained by a sense of its necessity. The council of ten, annually renewed, might annually have been annihilated. The great council had only to withhold their suffrages from the new candidates, and the tyranny expired of itself. This was several times attempted (I speak now of more modern ages); but the nobles, though detesting the council of ten, never steadily persevered in refusing to re-elect it. It was, in fact, become essential to Venice. So great were the vices of her constitution that she could not endure their remedies. If the council of ten had been abolished at any time since the fifteenth century, if the removal of that

h Villani several times speaks of the Venetians as regular Ghibelins. l. ix. c. 2, l. x. c. 89, &c. But this is put much too strongly; though their government may have had a slight bias towards that faction, they were in reality neutral, and far enough removed from any domestic feuds upon that score.

i By the modern law of Venice a nobleman could not engage in trade without derogating from his rank; I do not find this peculiarity observed by Jannotti and Contarini, the oldest writers on the Venetian government, but Daru informs us it was by a law enacted in 1400. Hist. de Venise, l. 589. It is noticed by Amelot de la Houssaye, who tells us also, as Daru does, that the nobility evaded the law by secret partnership with the privileged merchants or cittadini, who formed a separate class at Venice. This was the custom in modern times. But I have never understood the principle or common sense of such a restriction, especially combined with that other fundamental law which disqualified a Venetian nobleman from possessing a landed estate on the terra firma of the republic. The latter, however, did not extend, as I have been informed, to Dalmatia, or the Ionian islands.

jealous despotism had given scope to the corruption of a poor and debased aristocracy, to the license of a people unworthy of freedom, the republic would have soon lost her territorial possessions, if not her own independence. If, indeed, it be true, as reported, that during the last hundred years this formidable tribunal had sensibly relaxed its vigilance, if the Venetian government had become less tyrannical through sloth or decline of national spirit, our conjecture will have acquired the confirmation of experience. Experience has recently shown that a worse calamity than domestic tyranny might befall the queen of the Adriatic. In the Place of St. Mark, among the monuments of extinguished greatness, a traveller may regret to think that an insolent German soldiery has replaced even the senators of Venice. Her ancient liberty, her bright and romantic career of glory in countries so dear to the imagination, her magnanimous defence in the war of Chioggia, a few thinly scattered names of illustrious men, will rise upon his mind, and mingle with his indignation at the treachery which robbed her of her independence. But if he has learned the true attributes of wisdom in civil policy, he will not easily prostitute that word to a constitution formed without reference to property or to population, that vested sovereign power partly in a body of impoverished nobles, partly in an overruling despotism; or to a practical system of government that made vice the ally of tyranny, and sought impunity for its own assassinations by encouraging dissoluteness of private life. Perhaps, too, the wisdom so often imputed to the senate in its foreign policy has been greatly exaggerated. The balance of power established in Europe, and above all in Italy, maintained for the two last centuries states of small intrinsic resources, without any efforts of their own. In the ultimate crisis, at least, of Venetian liberty, that solemn mockery of statesmanship was exhibited to contempt; too blind to avert danger, too cowardly to withstand it, the most ancient government of Europe made not an instant's resistance; the peasants of Underwald died upon their mountains; the nobles of Venice clung only to their lives.*j*

j The circumstances to which Venice was reduced in her last agony by the violence and treachery of Napoleon, and the apparent impossibility of an effective resistance, so fully described by Daru, and still better by Botta, induce me to modify the severity of this remark. In former editions I have by mistake said that the last doge of Venice, Manini, is buried in the church of the Scalzi, with the inscription on the stone, Manini Cineres. This church was indeed built by the contributions of several noble families, among them the Manini, most of whom are interred there; but the last doge himself lies in that of the Jesuits.

Until almost the middle of the fourteenth century Venice had been content without any territorial possessions in Italy; unless we reckon a very narrow strip of sea-coast, bordering on her lagunes, called the Dogato. Neutral in the great contests between the church and the empire, between the free cities and their sovereigns, she was respected by both parties, while neither ventured to claim her as an ally. But the rapid progress of Mastino della Scala, lord of Verona, with some particular injuries, led the senate to form a league with Florence against him. Villani mentions it as a singular honor for his country to have become the confederate of the Venetians, "who, for their great excellence and power, had never allied themselves with any state or prince, except at their ancient conquest of Constantinople and Romania." *k* The result of this combination was to annex the district of Treviso to the Venetian dominions. But they made no further conquests in that age. On the contrary, they lost Treviso in the unfortunate war of Chioggia, and did not again regain it till 1389. Nor did they seriously attempt to withstand the progress of Gian Galeazzo Visconti, who, after overthrowing the family of Scala, stretched almost to the Adriatic, and altogether subverted for a time the balance of power in Lombardy.

But upon the death of this prince, in 1404, a remarkable crisis took place in that country. He left two sons, Giovanni Maria and Filippo Maria, both young, and under the care of a mother who was little fitted for her situation. Through her misconduct and the selfish ambition of some military leaders, who had commanded Gian Galeazzo's mercenaries, that extensive dominion was soon broken into fragments. Bergamo, Como, Lodi, Cremona, and other cities revolted, submitting themselves in general to the families of their former princes, the earlier race of usurpers, who had for nearly a century been crushed by the Visconti. A Guelf faction revived after the name had long been proscribed in Lombardy. Francesco da Carrara, lord of Padua, availed himself of this revolution to get possession of Verona, and seemed likely to unite all the cities beyond the Adige. No family was so odious to the Venetians as that of Carrara.

The words Manini Cineres may be read in both, which probably was the cause of my forgetfulness. [1850.]

See in the Edinburgh Review, vol. xii. p. 379, an account of a book which is, perhaps, little known, though interesting to the history of our own age: a collection of documents illustrating the fall of the republic of Venice. The article is well written, and, I presume, contains a faithful account of the work; the author of which, Signor Barzoni, is respected as a patriotic writer in Italy.

k L. xi. c. 49.

Though they had seemed indifferent to the more real danger in Gian Galeazzo's lifetime, they took up arms against this inferior enemy. Both Padua and Verona were reduced, and, the Duke of Milan ceding Vicenza, the republic of Venice came suddenly into the possession of an extensive territory. Francesco da Carrara, who had surrendered in his capital, was put to death in prison at Venice.

Notwithstanding the deranged condition of the Milanese, no further attempts were made by the senate of Venice for twenty years. They had not yet acquired that decided love of war and conquest which soon began to influence them against all the rules of their ancient policy. There were still left some wary statesmen of the old school to check ambitious designs. Sanuto has preserved an interesting account of the wealth and commerce of Venice in those days. This is thrown into the mouth of the Doge Mocenigo, whom he represent as dissuading his country, with his dying words, from undertaking a war against Milan. "Through peace our city has every year," he said, "ten millions of ducats employed as mercantile capital in different parts of the world; the annual profit of our traders upon this sum amounts to four millions. Our housing is valued at 7,000,000 ducats; its annual rental at 500,000. Three thousand merchant-ships carry on our trade; forty-three galleys and three hundred smaller vessels, manned by 19,000 sailors, secure our naval power. Our mint has coined 1,000,000 ducats within the year. From the Milanese dominions alone we draw 1,654,000 ducats in coin, and the value of 900,000 more in cloths; our profit upon this traffic may be reckoned at 600,000 ducats. Proceeding as you have done to acquire this wealth, you will become masters of all the gold in Christendom; but war, and especially unjust war, will lead infallibly to ruin. Already you have spent 900,000 ducats in the acquisition of Verona and Padua; yet the expense of protecting these places absorbs all the revenue which they yield. You have many among you, men of probity and experience; choose one of these to succeed me; but beware of Francesco Foscari. If he is doge, you will soon have war, and war will bring poverty and loss of honor." [l] Mocenigo died, and Foscari became doge:

[l] Sanuto, Vite di Duchi di Venezia, in Script. Rer. Ital. t. xxii. p. 958. Mocenigo's harangue is very long in Sanuto. I have endeavored to preserve the substance. But the calculations are so strange and manifestly inexact that they deserve little regard. Daru has given them more at length, Hist. de Venise, vol. ii. p. 205. The revenues of Venice, which had amounted to 996,290 ducats in

the prophecies of the former were neglected; and it cannot wholly be affirmed that they were fulfilled. Yet Venice is described by a writer thirty years later as somewhat impaired in opulence by her long warfare with the dukes of Milan.

The latter had recovered a great part of their dominions as rapidly as they had lost them. Giovanni Maria, the elder brother, a monster of guilt even among the Visconti, having been assassinated, Filippo Maria assumed the government of Milan and Pavia, almost his only possessions. But though weak and unwarlike himself, he had the good fortune to employ Carmagnola, one of the greatest generals of that military age. Most of the revolted cities were tired of their new masters, and, their inclinations conspiring with Carmagnola's eminent talents and activity, the house of Visconti reassumed its former ascendency from the Sessia to the Adige. Its fortunes might have been still more prosperous if Filippo Maria had not rashly as well as ungratefully offended Carmagnola. That great captain retired to Venice, and inflamed a disposition towards war which the Florentines and the Duke of Savoy had already excited. The Venetians had previously gained some important advantages in another quarter, by reducing the country of Friuli, with part of Istria, which had for many centuries depended on the temporal authority of a neighboring prelate, the patriarch of Aquileia. They entered into this new alliance. [A.D. 1426.] No undertaking of the republic had been more successful. Carmagnola led on their armies, and in about two years Venice acquired Brescia and Bergamo, and extended her boundary to the river Adda, which she was destined never to pass.

Such conquests could only be made by a city so peculiarly maritime as Venice through the help of mercenary troops. But, in employing them, she merely conformed to a fashion which states to whom it was less indispensable had long since established. A great revolution had taken place in the system of military service through most parts of Europe, but especially in Italy. During the twelfth and thirteenth centuries, whether the Italian cities were engaged in their contest with the em-

1423, were but 945,750 in 1469, notwithstanding her acquisition, in the meantime, of Brescia, Bergamo, Ravenna, and Crema. Id. ii. 462. They increased considerably in the next twenty years. The taxes, however, were light in the Venetian dominions; and Daru conceives the revenues of the republic, reduced to a corn price, to have not exceeded the value of 11,000,000 francs at the present day: p. 542.

perors or in less arduous and general hostilities among each other, they seem to have poured out almost their whole population as an armed and loosely organized militia. A single city, with its adjacent district, sometimes brought twenty or thirty thousand men into the field. Every man, according to the trade he practised, or quarter of the city wherein he dwelt, knew his own banner and the captain he was to obey.[m] In battle the carroccio formed one common rallying-point, the pivot of every movement. This was a chariot, or rather wagon, painted with vermilion, and bearing the city standard elevated upon it. That of Milan required four pair of oxen to drag it forward.[n] To defend this sacred emblem of his country, which Muratori compares to the ark of the covenant among the Jews, was the constant object, that, giving a sort of concentration and uniformity to the army, supplied in some degree the want of more regular tactics. This militia was of course principally composed of infantry. At the famous battle of the Arbia, in 1260, the Guelf Florentines had thirty thousand foot and three thousand horse;[o] and the usual proportion was five, six, or ten to one. Gentlemen, however, were always mounted; and the superiority of a heavy cavalry must have been prodigiously great over an undisciplined and ill-armed populace. In the thirteenth and following centuries armies seem to have been considered as formidable nearly in proportion to the number of men-at-arms or lancers. A charge of cavalry was irresistible; battles were continually won by inferior numbers, and vast slaughter was made among the fugitives.[p]

As the comparative inefficiency of foot-soldiers became evident, a greater proportion of cavalry was employed, and armies, though better equipped and disciplined, were less numerous. This we find in the early part of the fourteenth century. The main point for a state at war was to obtain a sufficient force of men-at-arms. As few Italian cities could muster a large body of cavalry from their own population, the obvious resource was to hire mercenary troops. This had been practised in some instances much earlier. The city of Genoa took the Count of

m Muratori, Antiq. Ital. Diss. 26; Denina, Rivoluzioni d' Italia, l. xii. c. 4.

n The carroccio was invented by Eribert, a celebrated archibishop of Milan, about 1039. Annali di Murat.; Antiq. Ital. Diss. 26. The carroccio of Milan was taken by Frederic II. in 1237, and sent to Rome. Parma and Cremona lost their carroccios to each other, and exchanged them some years afterwards with great exultation. In the fourteenth century this custom had gone into disuse.—Id. ibid. Denina, l. xii. c. 4.

o Villani, l. vi. c. 79.

p Sismondi, t. iii. p. 263, &c., has some judicious observations on this subject.

Savoy into pay with two hundred horse in 1225.[q] Florence retained five hundred French lances in 1282.[r] But it became much more general in the fourteenth century, chiefly after the expedition of the Emperor Henry VII. in 1310. Many German soldiers of fortune, remaining in Italy on this occasion, engaged in the service of Milan, Florence, or some other state. The subsequent expeditions of Louis of Bavaria in 1326, and of John, King of Bohemia, in 1331, brought a fresh accession of adventurers from the same country. Others again came from France, and some from Hungary. All preferred to continue in the richest country and finest climate of Europe, where their services were anxiously solicited and abundantly repaid. An unfortunate prejudice in favor of strangers prevailed among the Italians of that age. They ceded to them, one knows not why, certainly without having been vanquished, the palm of military skill and valor. The word Transalpine (Oltramontani) is frequently applied to hired cavalry by the two Villani as an epithet of excellence.

The experience of every fresh campaign now told more and more against the ordinary militia. It has been usual for modern writers to lament the degeneracy of martial spirit among the Italians of that age. But the contest was too unequal between an absolutely invulnerable body of cuirassiers and an infantry of peasants or citizens. The bravest men have little appetite for receiving wounds and death without the hope of inflicting any in return. The parochial militia of France had proved equally unserviceable; though, as the life of a French peasant was of much less account in the eyes of his government than that of an Italian citizen, they were still led forward like sheep to the slaughter against the disciplined forces of Edward III. The cavalry had about this time laid aside the hauberk, or coat-of-mail, their ancient distinction from the unprotected populace; which, though incapable of being cut through by the sabre, afforded no defence against the pointed sword introduced in the thirteenth century,[s] nor repelled the

[q] Muratori, Dissert, 26.

[r] Ammirato, Ist. Fiorent. p. 159. The same was done in 1297, p. 200. A lance, in the technical language of those ages, included the lighter cavalry attached to the man-at-arms as well as himself. In France the full complement of a lance (lance fournie) was five or six horses; thus the 1,500 lances who composed the original companies of ordonnance raised by Charles VI. amounted to nine thousand cavalry. But in Italy the number was smaller. We read frequently of barbuti, which are defined lanze de due cavalli. Corio, p. 437. Lances of three horses were introduced about the middle of the fourteenth century.— Id. p. 466.

[s] Muratori, ad ann. 1226.

impulse of a lance or the crushing blow of a battle-axe. Plate-armor was substituted in its place; and the man-at-arms, cased in entire steel, the several pieces firmly riveted, and proof against every stroke, his charger protected on the face, chest, and shoulders, or, as it was called, barded, with plates of steel, fought with a security of success against enemies inferior perhaps only in these adventitious sources of courage to himself.[t]

Nor was the new system of conducting hostilities less inconvenient to the citizens than the tactics of a battle. Instead of rapid and predatory invasions, terminated instantly by a single action, and not extending more than a few days' march from the soldier's home, the more skilful combinations usual in the fourteenth century frequently protracted an indecisive contest for a whole summer.[u] As wealth and civilization made evident the advantages of agriculture and mercantile industry, this loss of productive labor could no longer be endured. Azzo Visconti, who died in 1339, dispensed with the personal service of his Milanese subjects. "Another of his laws," says Galvaneo Fiamma, "was that the people should not go to war, but remain at home for their own business. For they had hitherto been kept with much danger and expense every year, and especially in time of harvest and vintage, when princes are wont to go to war, in besieging cities, and incurred numberless losses, and chiefly on account of the long time that they were so detained.[v] This law of Azzo Visconti, taken separately, might be ascribed to the usual policy of an absolute government. But we find a similar innovation not long afterwards at Florence. In the war carried on by that republic against Giovanni Visconti in 1351, the younger Villani informs us that "the useless and mischievous personal service of the inhabitants of the district was commuted into a money payment."[w] This change indeed was necessarily accompanied by a vast increase of taxation. The Italian states, republics as well as principalities, levied very heavy contributions. Mastino della Scala had a revenue of

t The earliest plate-armor, engraved in Montfaucon's Monumens de la Monarchie Francaise, t. ii., is of the reign of Philip the Long, about 1315; but it does not appear generally till that of Philip of Valois, or even later. Before the complete harness of steel was adopted, plated caps were sometimes worn on the knees and elbows, and even greaves on the legs. This is represented in a statue of Charles I. King of Naples, who died in 1285. Possibly the statue may not be quite so ancient. Montfaucon, passim.— Daniel. Hist. de la Milice Française, p. 395.

u This tedious warfare *á la Fablus* is called by Villani guerra guereggiata, l. viii. c. 49; at least I can annex no other meaning to the expression.

v Muratori, Antiquit. Ital. Dissert. 26.

w Matt. Villani, p. 135.

700,000 florins, more, says John Villani, than the king of any European country, except France, possesses.[x] Yet this arose from only nine cities of Lombardy. Considered with reference to economy, almost any taxes must be a cheap commutation for personal service. But economy may be regarded too exclusively, and can never counterbalance that degradation of a national character which proceeds from intrusting the public defence to foreigners.

It could hardly be expected that stipendiary troops, chiefly composed of Germans, would conduct themselves without insolence and contempt of the effeminacy which courted their services. Indifferent to the cause which they supported, the highest pay and the richest plunder were their constant motives. As Italy was generally the theatre of war in some of her numerous states, a soldier of fortune, with his lance and charger for an inheritance, passed from one service to another without regret and without discredit. But if peace happened to be pretty universal, he might be thrown out of his only occupation, and reduced to a very inferior condition, in a country of which he was not a native. It naturally occurred to men of their feelings, that, if money and honor could only be had while they retained their arms, it was their own fault if they ever relinquished them. Upon this principle they first acted in 1343, when the republic of Pisa disbanded a large body of German cavalry which had been employed in a war with Florence.[y] A partisan, whom the Italians call the Duke Guarnieri, engaged these dissatisfied mercenaries to remain united under his command. His plan was to levy contributions on all countries which he entered with his company, without aiming at any conquests. No Italian army, he well knew, could be raised to oppose him; and he trusted that other mercenaries would not be ready to fight against men who had devised a scheme so advantageous to the profession. This was the first of the companies of adventure which continued for many years to be the scourge

[x] L. xi. c. 45. I cannot imagine why Sismondi aserts, t. iv. p. 432, that the lords of cities in Lombardy did not venture to augment the taxes imposed while they had been free. Complaints of heavy taxation are certainly often made against the Visconti and other tyrants in the fourteenth century.

[y] Sismondi, t. v. p. 380. The dangerous aspect which these German mercenaries might assume had appeared four years before, when Lodrisio, one of the Visconti, having quarrelled with the lord of Milan, led a large body of troops who had just been disbanded against the city. After some desperate battles the mercenaries were defeated and Lodrisio taken. t. v. p. 278. In this instance, however, they acted for another; Guarnieri was the first who taught them to preserve the impartiality of general robbers.

and disgrace of Italy. Guarnieri, after some time, withdrew his troops, satiated with plunder, into Germany; but he served in the invasion of Naples by Louis, King of Hungary in 1348, and, forming a new company, ravaged the ecclesiastical state. A still more formidable band of disciplined robbers appeared in 1353, under the command of Fra Moriale, and afterwards of Conrad Lando. This was denominated the Great Company, and consisted of several thousand regular troops, besides a multitude of half-armed ruffians, who assisted as spies, pioneers, and plunderers. The rich cities of Tuscany and Romagna paid large sums, that the Great Company, which was perpetually in motion, might not march through their territory. Florence alone magnanimously resolved not to offer this ignominious tribute. Upon two occasions, once in 1358, and still more conspicuously the next year, she refused either to give a passage to the company, or to redeem herself by money; and in each instance the German robbers were compelled to retire. At this time they consisted of five thousand cuirassiers, and their whole body was not less than twenty thousand men; a terrible proof of the evils which an erroneous system had entailed upon Italy. Nor were they repulsed on this occasion by the actual exertions of Florence. The courage of that republic was in her councils, not in her arms; the resistance made to Lando's demand was a burst of national feeling, and rather against the advice of the leading Florentines;[z] but the army employed was entirely composed of mercenary troops, and probably for the greater part of foreigners.

None of the foreign partisans who entered into the service of Italian states acquired such renown in that career as an Englishman whom contemporary writers call Aucud or Agutus, but to whom we may restore his national appellation of Sir John Hawkwood. This very eminent man had served in the war of Edward III., and obtained his knighthood from that sovereign, though originally, if we may trust common fame, bred to the trade of a tailor. After the peace of Bretigni, France was ravaged by the disbanded troops, whose devastations Edward was accused, perhaps unjustly, of secretly instigating. A large body of these, under the name of the White Company, passed into the service of the Marquis of Montferrat. They were some time afterwards employed by the Pisans

z Matt. Villani, p. 537.

against Florence; and during this latter war Hawkwood appears as their commander. For thirty years he was continually engaged in the service of the Visconti, of the pope, or of the Florentines, to whom he devoted himself for the latter part of his life with more fidelity and steadiness than he had shown in his first campaigns. The republic testified her gratitude by a public funeral, and by a monument in the Duomo, which still perpetuates his memory.

The name of Sir John Hawkwood is worthy to be remembered as that of the first distinguished commander who had appeared in Europe since the destruction of the Roman empire. It would be absurd to suppose that any of the constituent elements of military genius which nature furnishes to energetic characters were wanting to the leaders of a barbarian or feudal army: untroubled perspicacity in confusion, firm decision, rapid execution, providence against attack, fertility of resource and stratagem—these are in quality as much required from the chief of an Indian tribe as from the accomplished commander. But we do not find them in any instance so consummated by habitual skill as to challenge the name of generalship. No one at least occurs to me, previously to the middle of the fourteenth century, to whom history has unequivocally assigned that character. It is very rarely that we find even the order of battle specially noticed. The monks, indeed, our only chroniclers, were poor judges of martial excellence; yet, as war is the main topic of all annals, we could hardly remain ignorant of any distinguished skill in its operations. This neglect of military science certainly did not proceed from any predilection for the arts of peace. It arose out of the general manners of society, and out of the nature and composition of armies in the middle ages. The insubordinate spirit of feudal tenants, and the emulous quality of chivalry, were alike hostile to that gradation of rank, that punctual observance of irksome duties, that prompt obedience to a supreme command, through which a single soul is infused into the active mass, and the rays of individual merit converge to the head of the general.

In the fourteenth century we begin to conceive something of a more scientific character in military proceedings, and historians for the first time discover that success does not entirely depend upon intrepidity and physical prowess. The victory of Muhldorf over the Austrian princes in 1322, that decided a civil

war in the empire, is ascribed to the ability of the Bavarian commander.[a] Many distinguished officers were formed in the school of Edward III. Yet their excellences were perhaps rather those of active partisans than of experienced generals. Their successes are still due rather to daring enthusiasm than to wary and calculating combination. Like inexpert chess-players, they surprise us by happy sallies against rule, or display their talents in rescuing themselves from the consequences of their own mistakes. Thus the admirable arrangements of the Black Prince at Poitiers hardly redeem the temerity which placed him in a situation where the egregious folly of his adversary alone could have permitted him to triumph. Hawkwood therefore appears to me the first real general of modern times; the earliest master, however imperfect, in the science of Turenne and Wellington. Every contemporary Italian historian speaks with admiration of his skilful tactics in battle, his stratagems, his well-conducted retreats. Praise of this description, as I have observed, is hardly bestowed, certainly not so continually, on any former captain.

Hawkwood was not only the greatest but the last of the foreign condottieri, or captains of mercenary bands. While he was yet living a new military school had been formed in Italy, which not only superseded, but eclipsed, all the strangers. This important reform was ascribed to Alberic di Barbiano, lord of some petty territories near Bologna. He formed a company altogether of Italians about the year 1379. It is not to be supposed that natives of Italy had before been absolutely excluded from service. We find several Italians, such as the Malatesta family, lords of Rimini, and the Rossi of Parma, commanding the armies of Florence much earlier. But this was the first trading company, if I may borrow the analogy, the first regular body of Italian mercenaries, attached only to their commander without any consideration of party, like the Germans and English of Lando and Hawkwood. Alberic di Barbiano, though himself no doubt a man of military talents, is principally distinguished by the school of great generals which the company of St. George under his command produced, and which may be deduced, by regular succession, to the sixteenth century. The first in order of time, and immediate contemporaries

a Struvius, Corpus Hist. German. p. 585. Schwepperman, the Bavarian general, is called by a contemporary writer clarus militari scientiâ vir.

of Barbiano, were Jacopo del Verme, Facino Cane, and Ottobon Terzo. Among an intelligent and educated people, little inclined to servile imitation, the military art made great progress. The most eminent condottieri being divided, in general, between belligerents, each of them had his genius excited and kept in tension by that of a rival in glory. Every resource of science as well as experience, every improvement in tactical arrangements, and the use of arms, were required to obtain an advantage over such equal enemies. In the first year of the fifteenth century the Italians brought their newly acquired superiority to a test. The Emperor Robert, in alliance with Florence, invaded Gian Galeazzo's dominions with a considerable army. From old reputation, which so frequently survives the intrinsic qualities upon which it was founded, an impression appears to have been excited in Italy that the native troops were still unequal to meet the charge of German cuirassiers. The Duke of Milan gave orders to his general, Jacopo del Verme, to avoid a combat. But that able leader was aware of a great relative change in the two armies. The Germans had neglected to improve their discipline; their arms were less easily wielded, their horses less obedient to the bit. A single skirmish was enough to open their eyes; they found themselves decidedly inferior; and having engaged in the war with the expectation of easy success, were readily disheartened.[b] This victory, or rather this decisive proof that victory might be achieved, set Italy at rest for almost a century from any apprehensions on the side of her ancient masters.

Whatever evils might be derived, and they were not trifling, from the employment of foreign or native mercenaries, it was impossible to discontinue the system without general consent; and too many states found their own advantage in it for such an agreement. The condottieri were indeed all notorious for contempt of engagements. Their rapacity was equal to their bad faith. Besides an enormous pay, for every private cuirassier received much more in value than a subaltern officer at present, they exacted gratifications for every success.[c] But everything

b Sismondi, t. vii. p. 439.

c Paga doppia, e mese compiuto, of which we frequently read, sometimes granted improvidently, and more often demanded unreasonably. The first speaks for itself; the second was the reckoning a month's service as completed when it was begun, in calculating their pay.—Matt. Villani, p. 62; Sismondi, t. v. p. 412.

Gian Galleazo Visconti promised constant half-pay to the condottieri whom he disbanded in 1396. This, perhaps, is the first instance of half-pay.— Sismondi, t. vii. p. 379.

was endured by ambitious governments who wanted their aid. Florence and Venice were the two states which owed most to the companies of adventure. The one loved war without its perils; the other could never have obtained an inch of territory with a population of sailors. But they were both almost inexhaustively rich by commercial industry; and, as the surest paymasters, were best served by those they employed. The Visconti might perhaps have extended their conquest over Lombardy with the militia of Milan; but without a Jacopo del Verme or a Carmagnola, the banner of St. Mark would never have floated at Verona and Bergamo.

The Italian armies of the fifteenth century have been remarked for one striking peculiarity. War has never been conducted at so little personal hazard to the soldier. Combats frequently occur, in the annals of that age, wherein success, though warmly contested, costs very few lives even to the vanquished.*d* This innocence of blood, which some historians turn into ridicule, was no doubt owing in a great degree to the rapacity of the companies of adventure, who, in expectation of enriching themselves by the ransom of prisoners, were anxious to save their lives. Much of the humanity of modern warfare was originally due to this motive. But it was rendered more practicable by the nature of their arms. For once, and for once only in the history of mankind, the art of defence had outstripped that of destruction. In a charge of lancers many fell, unhorsed by the shock, and might be suffocated or bruised to death by the pressure of their own armor; but the lance's point could not penetrate the breastplate, the sword fell harmless upon the helmet, the conqueror, in the first impulse of passion, could not assail any vital part of a prostrate but not

d Instances of this are very frequent. Thus at the action of Zagonara, in 1423, but three persons, according to Machiavelli lost their lives, and these by suffocation in the mud. Ist. Fiorent. l. iv. At that of Molinella, in 1467, he says that no one was killed. l. vii. Ammirato reproves him for this, as all the authors of the time represent it to have been sanguinary (t. ii. p. 102), and insinuates that Machiavelli ridicules the inoffensiveness of those armies more than they deserve, schernendo, come egli suol far, quella milizia. Certainly some few battles of the fifteenth century were not only obstinately contested, but attended with considerable loss. Sismondi, t. x. p. 126, 137. But, in general, the slaughter must appear very trifling. Ammirato himself says that in an action between the Neapolitian and papal troops in 1486, which lasted all day, not only no one was killed, but it is not recorded that any one was wounded. Roscoe's Lorenzo de' Medici, vol. ii. p. 37. Guicciardini's general testimony to the character of these combats is unequivocal. He speaks of the battle of Fornova, between the confederates of Lombardy and the army of Charles VIII. returning from Naples in 1495, as very remarkable on account of the slaughter, which amounted on the Italian side to 3,000 men: perchè fù la prima, che da lunghissimo tempo in quà si combattesse con uccisione e con sangue in Italia, perchè innanzi à questa morivano pochissimi uomini in un fatto d'arme. l. ii. p. 175.

exposed enemy. Still less was to be dreaded from the archers or cross-bowmen, who composed a large part of the infantry. The bow indeed, as drawn by an English foot-soldier, was the most formidable of arms before the invention of gunpowder. That ancient weapon, though not perhaps common among the northern nations, nor for several centuries after their settlement, was occasionally in use before the crusades. William employed archers in the battle of Hastings.[e] Intercourse with the East, its natural soil, during the twelfth and thirteenth ages, rendered the bow better known. But the Europeans improved on the eastern method of confining its use to cavalry. By employing infantry as archers, they gained increased size, more steady position, and surer aim for the bow. Much, however, depended on the strength and skill of the archer. It was a peculiarly English weapon, and none of the other principal nations adopted it so generally or so successfully. The cross-bow, which brought the strong and weak to a level, was more in favor upon the continent. This instrument is said by some writers to have been introduced after the first crusade in the reign of Louis the Fat.[f] But, if we may trust William of Poitou, it was employed, as well as the long-bow, at the battle of Hastings. Several of the popes prohibited it as a treacherous weapon; and the restriction was so far regarded, that, in the time of Philip Augustus, its use is said to have been unknown in France.[g] By degress it became more general; and cross-bowmen were considered as a very necessary part of a well-organized army. But both the arrow and the quarrel glanced away from plate-armor, such as it became in the fifteenth century, impervious in every point, except when the visor was raised from the face, or some part of the body accidentally exposed. The horse indeed was less completely protected.

Many disadvantages attended the security against wounds for which this armor had been devised. The enormous weight exhausted the force and crippled the limbs. It rendered the heat of a southern climate insupportable. In some circumstances it increased the danger of death, as in the passage of a river or morass. It was impossible to compel an enemy to

e Pedites in fronte locavit, sagittis armatos et balistis, item pedites in ordine secundo firmiores et loricatos, ultimo turmas equitum. Gul. Pictaviensis (in Du Chesne), p. 201. Several archers are represented in the tapestry of Bayeux.

f Le Grand, Vie privée des Français, t. i. p. 349.

g Du Cange, v. Balista; Muratori Diss. 26, t. i. p. 462 (Ital.).

fight, because the least intrenchment or natural obstacle could stop such unwieldy assailants. The troops must be kept in constant alarm at night, and either compelled to sleep under arms, or run the risk of being surprised before they could rivet their plates of steel.*h* Neither the Italians, however, nor the Transalpines would surrender a mode of defence which they ought to have deemed inglorious. But in order to obviate some of its military inconveniences, as well as to give a concentration in attack, which lancers impetuously charging in a single line, according to the practice at least of France in the middle ages, did not preserve, it became usual for the cavalry to dismount, and, leaving their horses at some distance, to combat on foot with the lance. This practice, which must have been singularly embarrassing with the plate-armor of the fifteenth century, was introduced before it became so ponderous. It is mentioned by historians of the twelfth century, both as a German and an English custom.*i* We find it in the wars of Edward III. Hawkwood, the disciple of that school, introtroduced it into Italy.*j* And it was practised by the English in their second wars with France, especially at the battles of Crevant and Verneuil.*k*

Meanwhile a discovery accidentally made, perhaps in some remote age and distant region, and whose importance was but slowly perceived by Europe, had prepared the way not only for a change in her military system, but for political effects still more extensive. If we consider gunpowder as an instrument of human destruction, incalculably more powerful than any that skill had devised or accident presented before, acquiring, as experience shows us, a more sanguinary dominion in every succeeding age, and borrowing all the progressive resources of science and civilization for the extermination of mankind, we shall be appalled at the future prospects of the species, and feel perhaps in no other instance so much difficulty in reconciling the mysterious dispensation with the benevolent order of Provi-

h Sismondi, t. ix. p. 158.

i The Emperor Conrad's cavalry in the second crusade are said by William of Tyre to have dismounted on one occasion, and fought on foot, de equis descendentes, et facti pedites; *sicut mos est Teutonicis* in summis necessitatibus bellica tractare negotia. l. xvii. c. 4. And the same was done by the English in their engagement with the Scotch near North-Allerton, commonly called the battle of the Standard, in 1138. Twysden, Decem. Script. p. 342.

j Sismondi, t. vi. p. 429; Azarius, in Script. Rer. Ital. t. vxi.; Matt. Villani.

k Monstrelet, t. ii. fol. 7, 14, 76; Villaret, t. xvii. p. 89. It was a Burgundian as well as English fashion. Entre les Bourguignons, says Comines, lors estoient les plus honorez ceux que descendoient avec les archers. l. i. c. 3.

dence. As the great security for established governments, the surest preservation against popular tumult, it assumes a more equivocal character, depending upon the solution of a doubtful problem, whether the sum of general happiness has lost more in the last three centuries through arbitrary power, than it has gained through regular police and suppression of disorder.

There seems little reason to doubt that gunpowder was introduced through the means of the Saracens into Europe. Its use in engines of war, though they may seem to have been rather like our fireworks than artillery, is mentioned by an Arabic writer in the Escurial collection about the year 1249.[l] It was known not long afterwards to our philosopher Roger Bacon, though he concealed, in some degree, the secret of its composition. In the first part of the fourteenth century cannon, or rather mortars, were invented, and the applicability of gunpowder to purposes of war was understood. Edward III. employed some pieces of artillery with considerable effect at Crecy.[m] But its use was still not very frequent; a circumstance which will surprise us less when we consider the unscientific construction of artillery; the slowness with which it could be loaded; its stone balls, of uncertain aim and imperfect force, being commonly fired at a considerable elevation; and especially the difficulty of removing it from place to place during an action. In sieges, and in naval engagements, as, for example, in the war of Chioggia, it was more frequently employed.[n] Gradually, however, the new artifice of evil gained

l Casiri, Bibl. Arab. Hispan. t. ii. p. 7, thus renders the original description of certain missiles used by the Moors. Serpunt, susurrantque scorpiones circumligati ac pulvere nitrato incensi, unde explosi fulgurant ac incendunt. Jam videre erat manganum excussum veluti nubem per aera extendi ac tonitrus instar horrendum edere fragorem, ignemque undequàque vomens, omnia dirumpere, incendere, in cineres redigere. The Arabic passage is at the bottom of the page; and one would be glad to know whether *pulvis nitratus* is a fair translation. But I think there can on the whole be no doubt that gunpowder is meant. Another Arabian writer seems to describe the use of cannon in the years 1312 and 1323. Id. ibid. And the chronicle of Alphonso XI., King of Castile, distinctly mentions them at the siege of Algeciras in 1342. But before this they were sufficently known in France. Gunpowder and cannon are both mentioned in registers of accounts under 1338 (Du Cange, v. Bombarda), and in another document of 1345. Hist. du Languedoc, t. iv. p. 204. But the strongest evidence is a passage of Petrarch, written before 1344, and quoted in Muratori, Antich. Ital. Dissert. 26, p. 456, where he speaks of the art, nuper rara, nunc communis.

m G. Villani, l. xii. c. 67. Gibbon has thrown out a sort of objection to the certainty of this fact, on account of Froissart's silence. But the positive testimony of Villani, who died within two years afterwards, and had manifestly obtained much information as to the great events passing in France, cannot be rejected. He ascribes a material effect to the cannon of Edward, colpi delle bombarde, which I suspect, from his strong expressions, had not been employed before, except against stone walls. It seemed, he says, as if God thundered con grande uccisione di genti, e sfondamento di cavalli.

n Gattaro, Ist. Padovana, in Script. Rer. Ital. t. xvii., p. 360. Several proofs of the employment of artillery in French sieges during the reign of Charles V. occur in Villaret. See the word Artillerie in the Index.

Gian Galeazzo had, according to

ground. The French made the principal improvements. They cast their cannon smaller, placed them on lighter carriages, and used balls of iron.[o] They invented portable arms for a single soldier, which, though clumsy in comparison with their present state, gave an augury of a prodigious revolution in the military art. John, Duke of Burgundy, in 1411, had 4,000 hand-cannons, as they were called, in his army.[p] They are found under different names and modifications of form—for which I refer the reader to professed writers on tactics—in most of the wars that historians of the fifteenth century record, but less in Italy than beyond the Alps. The Milanese, in 1449, are said to have armed their militia with 20,000 muskets, which struck terror into the old generals.[q] But these muskets, supported on a rest, and charged with great delay, did less execution than our sanguinary science would require; and, uncombined with the admirable invention of the bayonet, could not in any degree resist a charge of cavalry. The pike had a greater tendency to subvert the military system of the middle ages, and to demonstrate the efficiency of disciplined infantry. Two free nations had already discomfited, by the help of such infantry, those arrogant knights on whom the fate of battles had depended—the Bohemians, instructed in the art of war by their great master, John Zisca; and the Swiss, who, after winning their independence inch by inch from the house of Austria, had lately established their renown by a splendid victory over Charles of Burgundy. Louis XI. took a body of mercenaries from the United Cantons into pay. Maximilian had recourse to the same assistance.[r] And though the importance of infantry was not perhaps decidedly established till the Milanese wars of Louis XII. and Francis I., in the sixteenth century, yet the last years of the middle ages, according to our division, indicated the commencement of that military revolution in the general employment of pikemen and musketeers.

Soon after the beginning of the fifteenth century, to return

Corio, thirty-four pieces of cannon, small and great, in the Milanese army, about 1397.

o Guicciardini, l. i. p. 75, has a remarkable passage on the superiority of the French over the Italian artillery in consequence of these improvements.

p Villaret, t. xiii. pp. 176, 310.

q Sismondi, t. ix. p. 341. He says that it required a quarter of an hour to charge and fire a musket. I must confess that I very much doubt the fact of so many muskets having been collected. In 1432 that arm was seen for the first time in Tuscany. Muratori, Dissert. 26, p. 457.

r See Guicciardini's character of the Swiss troops, p. 192. The French, he says, had no native infantry; il regno di Francia era debolissimo di fanteria propria, the nobility monopolizing all warlike occupations. Ibid.

from this digression, two illustrious captains, educated under Alberic di Barbiano, turned upon themselves the eyes of Italy. These were Braccio di Montone, a noble Perugian, and Sforza Attendolo, originally a peasant in the village of Cotignuola. Nearly equal in reputation, unless perhaps Braccio may be reckoned the more consummate general, they were divided by a long rivalry, which descended to the next generation, and involved all the distinguished leaders of Italy. The distractions of Naples, and the anarchy of the ecclesiastical state, gave scope not only to their military but political ambition. Sforza was invested with extensive fiefs in the kingdom of Naples, and with the office of Great Constable. Braccio aimed at independent acquisitions, and formed a sort of principality around Perugia. This, however, was entirely dissipated at his death. When Sforza and Braccio were no more, their respective parties were headed by the son of the former, Francesco Sforza, and by Nicholas Piccinino, who for more than twenty years fought, with few exceptions, under opposite banners. Piccinino was constantly in the service of Milan. Sforza, whose political talents fully equalled his military skill, never lost sight of the splendid prospects that opened to his ambition. From Eugenius IV. he obtained the March of Ancona, as a fief of the Roman see. Thus rendered more independent than the ordinary condottieri, he mingled as a sovereign prince in the politics of Italy. He was generally in alliance with Venice and Florence, throwing his weight into their scale to preserve the balance of power against Milan and Naples. But his ultimate designs rested upon Milan. Filippo Maria, duke of that city, the last of his family, had only a natural daughter, whose hand he sometimes offered and sometimes withheld from Sforza. Even after he had consented to their union, his suspicious temper was incapable of admitting such a son-in-law into confidence, and he joined in the confederacy with the pope and King of Naples to strip Sforza of the March. At the death of Filippo Maria in 1447, that general had nothing left but his glory, and a very disputable claim to the Milanese succession. This, however, was set aside by the citizens, who revived their republican government. A republic in that part of Lombardy might, with the help of Venice and Florence, have withstood any domestic or foreign usurpation. But Venice was hostile, and Florence indifferent. Sforza became the general of this

new state, aware that such would be the probable means of becoming its master. No politician of that age scrupled any breach of faith for his interest. Nothing, says Machiavelli, was thought shameful, but to fail. Sforza, with his army, deserted to the Venetians; and the republic of Milan, being both incapable of defending itself and distracted by civil dissensions, soon fell a prey to his ambition. In 1450 he was proclaimed duke, rather by right of election, or of conquest, than in virtue of his marriage with Bianca, whose sex, as well as illegitimacy, seemed to preclude her from inheriting.

I have not alluded for some time to the domestic history of a kingdom which bore a considerable part, during the fourteenth and fifteenth centuries, in the general combinations of Italian policy, not wishing to interrupt the reader's attention by too frequent transitions. We must return again to a more remote age in order to take up the history of Naples. Charles of Anjou, after the deaths of Manfred and Conradin had left him without a competitor, might be ranked in the first class of European sovereigns. Master of Provence and Naples, and at the head of the Guelf faction in Italy, he had already prepared a formidable attack on the Greek empire, when a memorable revolution in Sicily brought humiliation on his latter years. John of Procida, a Neapolitan, whose patrimony had been confiscated for his adherence to the party of Manfred, retained, during long years of exile, an implacable resentment against the house of Anjou. From the dominions of Peter III., King of Aragon, who had bestowed estates upon him in Valencia, he kept his eye continually fixed on Naples and Sicily. The former held out no favorable prospects; the Ghibelin party had been entirely subdued, and the principal barons were of French extraction or inclinations. But the island was in a very different state. Unused to any strong government, it was now treated as a conquered country. A large body of French soldiers garrisoned the fortified towns, and the systematic oppression was aggravated by those insults upon the honor of families which are most intolerable to an Italian temperament. John of Procida, travelling in disguise through the island, animated the barons with a hope of deliverance. In like disguise he repaired to the pope, Nicolas III., who was jealous of the new Neapolitan dynasty, and obtained his sanction to the projected insurrection; to the court of Constantinople, from

which he readily obtained money; and to the King of Aragon, who employed that money in fitting out an armament, that hovered upon the coast of Africa, under pretext of attacking the Moors. It is, however, difficult at this time to distinguish the effects of preconcerted conspiracy from those of casual resentment. Before the intrigues so skilfully conducted had taken effect, yet after they were ripe for development, an outrage committed upon a lady at Palermo, during a procession on the vigil of Easter, provoked the people to that terrible massacre of all the French in their island which has obtained the name of Sicilian Vespers. [A.D. 1283.] Unpremeditated as such an ebullition of popular fury must appear, it fell in by the happiest coincidence, with the previous conspiracy. The King of Aragon's fleet was at hand; the Sicilians soon called in his assistance; he sailed to Palermo, and accepted the crown. John of Procida is a remarkable witness to the truth which the pride of governments will seldom permit them to acknowledge: that an individual, obscure and apparently insignificant, may sometimes, by perseverance and energy, shake the foundations of established states; while the perfect concealment of his intrigues proves also, against a popular maxim, that a political secret may be preserved by a number of persons during a considerable length of time.[s]

The long war that ensued upon this revolution involved or interested the greater part of civilized Europe. Philip III. of France adhered to his uncle, and the King of Aragon was compelled to fight for Sicily within his native dominions. This indeed was the most vulnerable point of attack. Upon the sea he was lord of the ascendant. His Catalans, the most intrepid of Mediterranean sailors, were led to victory by a Calabrian refugee, Roger di Loria, the most illustrious and successful admiral whom Europe produced till the age of Blake and de Ruyter. In one of Loria's battles the eldest son of the King of

s Giannone, though he has well described the schemes of John of Procida, yet, as is too often his custom, or rather that of Costanzo, whom he implicitly follows, drops or slides over leading facts; and thus, omitting entirely, or misrepresenting, the circumstances of the Sicilian Vespers, treats the whole insurrection as the result of a deliberate conspiracy. On the other hand, Nicolas Specialis, a contemporary writer, in the seventh volume of Muratori's collection, represents the Sicilian Vespers as proceeding entirely from the casual outrage in the streets of Palermo. The thought of calling in Peter, he asserts, did not occur to the Sicilians till Charles had actually commenced the siege of Messina. But this is equally removed from the truth. Gibbon has made more errors than are usual with so accurate an historian in his account of this revolution, such as calling Constance, the queen of Peter, sister instead of daughter of Manfred. A good narrative of the Sicilian Vespers may be found in Velly's History of France, t. vi.

Naples was made prisoner, and the first years of his own reign were spent in confinement. But notwithstanding these advantages, it was found impracticable for Aragon to contend against the arms of France, and latterly of Castile, sustained by the rolling thunders of the Vatican. Peter III. had bequeathed Sicily to his second son James; Alfonso, the eldest, King of Aragon, could not fairly be expected to ruin his inheritance for his brother's cause; nor were the barons of that free country disposed to carry on a war without national objects. He made peace, accordingly, in 1295, and engaged to withdraw all his subjects from the Sicilian service. Upon his own death, which followed very soon, James succeeded to the kingdom of Aragon, and ratified the renunciation of Sicily. But the natives of that island had received too deeply the spirit of independence to be thus assigned over by the letter of a treaty. After solemnly abjuring by their ambassadors, their allegiance to the King of Aragon, they placed the crown upon the head of his brother Frederic. They maintained the war against Charles II. of Naples, against James of Aragon, their former king, who had bound himself to enforce their submission, and even against the great Roger di Loria, who, upon some discontent with Frederic, deserted their banner, and entered into the Neapolitan service. Peace was at length made in 1300, upon condition that Frederic should retain during his life the kingdom, which was afterwards to revert to the crown of Naples: a condition not likely to be fulfilled.

Upon the death of Charles II., King of Naples, in 1305, a question arose as to the succession. His eldest son, Charles Martel, had been called by maternal inheritance to the throne of Hungary, and had left at his decease, a son, Carobert, the reigning sovereign of that country. According to the laws of representative succession, which were at this time tolerably settled in private inheritance, the crown of Naples ought to have regularly devolved upon that prince. But it was contested by his uncle Robert, the eldest living son of Charles II., and the cause was pleaded by civilians at Avignon before Pope Clement V., the feudal superior of the Neapolitan kingdom. Reasons of public utility, rather than of legal analogy, seem to have prevailed in the decision which was made in favor of Robert.[t] The course of his reign evinced the wisdom of this

[t] Giannone, l. xxii.; Summonte, t. ii. p. 370. Some of the civilians of that age, however, approved the decision.

determination. Robert, a wise and active, though not personally a martial prince, maintained the ascendency of the Guelf faction, and the papal influence connected with it, against the formidable combination of Ghibelin usurpers in Lombardy, and the two emperors Henry VII. and Louis of Bavaria. No male issue survived Robert, whose crown descended to his granddaughter Joanna. She had been espoused, while a child, to her cousin Andrew, son of Carobert, King of Hungary, who was educated with her in the court of Naples. Auspiciously contrived as this union might seem to silence a subsisting claim upon the kingdom, it proved eventually the source of a civil war and calamity for a hundred and fifty years. Andrew's manners were barbarous, more worthy of his native country than of that polished court wherein he had been bred. He gave himself up to the society of Hungarians, who taught him to believe that a matrimonial crown and derivative royalty were derogatory to a prince who claimed by a paramount hereditary right. In fact, he was pressing the court of Avignon to permit his own coronation, which would have placed in a very hazardous condition the rights of the queen, with whom he was living on ill terms, when one night he was seized, strangled, and thrown out of a window. [A.D. 1343.] Public rumor, in the absence of notorious proof, imputed the guilt of this mysterious assassination to Joanna. Whether historians are authorized to assume her participation in it so confidently as they have generally done, may perhaps be doubted; though I cannot venture positively to rescind their sentence. The circumstances of Andrew's death were undoubtedly pregnant with strong suspicions.[u] Louis King of Hungary, his brother, a just and stern prince, invaded Naples, partly as an avenger,

[u] The Chronicle of Dominic di Gravina (Script. Rer. Ital. t. xii.) seems to be our best testimony for the circumstances connected with Andrew's death; and after reading his narrative more than once, I find myself undecided as to this perplexed and mysterious story. Gravina's opinion, it should be observed, is extremely hostile to the queen. Nevertheless there are not wanting presumptions that Charles, first Duke of Durazzo, who had married the sister of Andrew, was concerned in his murder, for which in fact he was afterwards put to death by the King of Hungary. But, if the Duke of Durazzo was guilty, it is unlikely that Joanna should be so too; because she was on very bad terms with him, and indeed the chief proofs against her are founded on the investigation which Durazzo himself professed to institute. Confessions obtained through torture are as little credible in history as they ought to be in judicature; even if we could be positively sure, which is not the case in this instance, that such confessions were ever made. However, I do not pretend to acquit Joanna, but merely to notice the uncertainty that rests over her story, on account of the positiveness with which all historians, except those of Naples and the Abbé de Sade, whose vindication (Vie de Pétrarque, t. ii. notes) does her more harm than good, have assumed the murder of Andrew to have been her own act, as if she had ordered his execution in open day.

partly as a conqueror. The queen and her second husband, Louis of Tarento, fled to Provence, where her acquittal, after a solemn, if not an impartial, investigation, was pronounced by Clement VI. Louis, meanwhile, found it more difficult to retain than to acquire the kingdom of Naples; his own dominion required his presence; and Joanna soon recovered her crown. She reigned for thirty years more without the attack of any enemy, but not intermeddling, like her progenitors, in the general concerns of Italy. Childless by four husbands, the succession of Joanna began to excite ambitious speculations. Of all the male descendants of Charles I. none remained but the King of Hungary, and Charles Duke of Durazzo, who had married the queen's niece, and was regarded by her as the presumptive heir to the crown. But offended by her marriage with Otho of Brunswick, he procured the assistance of an Hungarian army to invade the kingdom, and, getting the queen into his power, took possession of the throne. In this enterprise he was seconded by Urban VI., against whom Joanna had unfortunately declared in the great schism of the church. She was smothered with a pillow, in prison, by the order of Charles. [A.D. 1378.] The name of Joan of Naples has suffered by the lax repetition of calumnies. Whatever share she may have had in her husband's death, and certainly under circumstances of extenuation, her subsequent life was not open to any flagrant reproach. The charge of dissolute manners, so frequently made, is not warranted by any specific proof or contemporary testimony.

In the extremity of Joanna's distress she had sought assistance from a quarter too remote to afford it in time for her relief. She adopted Louis Duke of Anjou, eldest uncle of the young King of France, Charles VI., as her heir in the kingdom of Naples and county of Provence. This bequest took effect without difficulty in the latter country. Naples was entirely in possession of Charles of Durazzo. Louis, however, entered Italy with a very large army, consisting at least of 30,000 cavalry, and, according to some writers, more than double that number.[v] He was joined by many Neapolitan barons attached to the late queen. But, by a fate not unusual in so imperfect a state of military science, this armament produced no adequate effect, and mouldered away through disease and want of pro-

[v] Muratori; Summonte; Costanzo.

visions. Louis himself dying not long afterwards, the government of Charles III. appeared secure, and he was tempted to accept an offer of the crown of Hungary. This enterprise, equally unjust and injudicious, terminated in his assassination. Ladislaus, his son, a child ten years old, succeeded to the throne of Naples, under the guardianship of his mother Margaret, whose exactions of money producing discontent, the party which had supported the late Duke of Anjou became powerful enough to call in his son. Louis II., as he was called, reigned at Naples, and possessed most part of the kingdom, for several years; the young King Ladislaus, who retained some of the northern provinces, fixing his residence at Gaeta. If Louis had prosecuted the war with activity, it seems probable that he would have subdued his adversary. But his character was not very energetic; and Ladislaus, as he advanced to manhood, displaying much superior qualities, gained ground by degrees, till the Angevin barons, perceiving the turn of the tide, came over to his banner, and he recovered his whole dominions.

The kingdom of Naples, at the close of the fourteenth century, was still altogether a feudal government. This had been introduced by the first Norman kings, and the system had rather been strengthened than impaired under the Angevin line. The princes of the blood, who were at one time numerous, obtained extensive domains by way of appanage. The principality of Tarento was a large portion of the kingdom.[w] The rest was occupied by some great families, whose strength, as well as pride, was shown in the number of men-at-arms whom they could muster under their banner. At the coronation of Louis II., in 1390, the Sanseverini appeared with 1,800 cavalry completely equipped.[x] This illustrious house, which had filled all the high offices of state, and changed kings at its pleasure, was crushed by Ladislaus, whose bold and unrelenting spirit well fitted him to bruise the heads of the aristocratic hydra. After thoroughly establishing his government at home, this ambitious monarch directed his powerful resources towards foreign conquests. The ecclesiastical territories had never been secure from rebellion or usurpation; but legitimate sovereigns had hitherto respected the patrimony of the head of the church.

w It comprehended the provinces now called Terra d'Otranto and Terra di Bari; besides part of those adjoining. Summonte, Istoria di Napoli, t. iii. p. 537. Orsini, Prince of Tarento, who died in 1463, had 4,000 troops in arms, and the value of 1,000,000 florins in movables, Sismondi, t. x. p. 151.

x Summonte, t. iii. p. 517; Giannone, l. xxiv. c. 4.

It was reserved for Ladislaus, a feudal vassal of the Holy See, to seize upon Rome itself as his spoil. For several years, while the disordered state of the church, in consequence of the schism and the means taken to extinguish it, gave him an opportunity, the King of Naples occupied great part of the papal territories. He was disposed to have carried his arms farther north, and attacked the republic of Florence, if not the states of Lombardy, when his death relieved Italy from the danger of this new tyranny.

An elder sister, Joanna II., reigned at Naples after Ladislaus. Under this queen, destitute of courage and understanding, and the slave of appetites which her age rendered doubly disgraceful, the kingdom relapsed into that state of anarchy from which its late sovereign had rescued it. I shall only refer the reader to more enlarged histories for the first years of Joanna's reign. In 1421 the two most powerful individuals were Sforza Attendolo, great constable, and Ser Gianni Caraccioli, the queen's minion, who governed the palace with unlimited sway. Sforza, aware that the favorite was contriving his ruin, and remembering the prison in which he had lain more than once since the accession of Joanna, determined to anticipate his enemies by calling in a pretender to the crown, another Louis of Anjou, third in descent of that unsuccessful dynasty. The Angevin party, though proscribed and oppressed, was not extinct; and the populace of Naples in particular had always been on that side. Caraccioli's influence and the queen's dishonorable weakness rendered the nobility disaffected. Louis III., therefore, had no remote prospect of success. But Caraccioli was more prudent than favorites, selected from such motives, have usually proved. Joanna was old and childless; the reversion to her dominions was a valuable object to any prince in Europe. None was so competent to assist her, or so likely to be influenced by the hope of succession, as Alfonso, King of Aragon and Sicily. That island, after the reign of its deliverer, Frederic I., had unfortunately devolved upon weak or infant princes. One great family, the Chiaramonti, had possessed itself of half Sicily; not by a feudal title, as in other kingdoms, but as a kind of counter-sovereignty, in opposition to the crown, though affecting rather to bear arms against the advisers of their kings than against themselves. The marriage of Maria, Queen of Sicily, with Martin, son of the King of Aragon, put an end to

the national independence of her country. Dying without issue, she left the crown to her husband. This was consonant, perhaps, to the received law of some European kingdoms. But, upon the death of Martin, in 1409, his father, also named Martin, King of Aragon, took possession as heir to his son, without any election by the Sicilian parliament. The Chiaramonti had been destroyed by the younger Martin, and no party remained to make opposition. Thus was Sicily united to the crown of Aragon. Alfonso, who now enjoyed those two crowns, gladly embraced the proposals of the Queen of Naples. They were founded, indeed, upon the most substantial basis, mutual interest. She adopted Alfonso as her son and successor, while he bound himself to employ his forces in delivering a kingdom that was to become his own. Louis of Anjou, though acknowledged in several provinces, was chiefly to depend upon the army of Sforza; and an army of Italian mercenaries could only be kept by means which he was not able to apply. The King of Aragon, therefore, had far the better prospects in the war, when one of the many revolutions of this reign defeated his immediate expectations. Whether it were that Alfonso's noble and affable nature afforded a contrast which Joanna was afraid of exhibiting to the people, or that he had really formed a plan to anticipate his succession to the throne, she became more and more distrustful of her adopted son, till, an open rupture having taken place, she entered into a treaty with her hereditary competitor, Louis of Anjou, and, revoking the adoption of Alfonso, substituted the French prince in his room. The King of Aragon was disappointed by this unforeseen stroke, which, uniting the Angevin faction with that of the reigning family, made it impracticable for him to maintain his ground for any length of time in the kingdom. Joanna reigned for more than ten years without experiencing any inquietude from the pacific spirit of Louis, who, content with his reversionary hopes, lived as a sort of exile in Calabria.[y] Upon

[y] Joanna's great favorite, Caraccioli, fell a victim some time before his mistress's death to an intrigue of the palace; the Duchess of Sessia, a new favorite, having prevailed on the feeble old queen to permit him to be assassinated. About this time Alfonso had every reason to hope for the renewal of the settlement in his favor. Caraccioli had himself opened a negotiation with the King of Aragon; and after his death the Duchess of Sessia embarked in the same cause. Joan even revoked secretly the adoption of the Duke of Anjou. This circumstance might appear doubtful: but the historian to whom I refer has published the act of revocation itself, which bears date April 11th, 1433. Zurita (Annales de Aragon, t. iv. p. 217) admits that no other writer, either contemporary or subsequent, has mentioned any part of the transaction, which must have been kept very secret; but his authority is so respectable that

his death, the queen, who did not long survive him, settled the kingdom on his brother Regnier. The Neapolitans were generally disposed to execute this bequest. But Regnier was unluckily at that time a prisoner to the Duke of Burgundy; and, though his wife maintained the cause with great spirit, it was difficult for her, or even for himself, to contend against the King of Aragon, who immediately laid claim to the kingdom. After a contest of several years, Regnier, having experienced the treacherous and selfish abandonment of his friends, yielded the game to his adversary; and Alfonso founded the Aragonese line of sovereigns at Naples, deriving pretensions more splendid than just from Manfred, from the house of Suabia, and from Roger Guiscard.z

In the first year of Alfonso's Neapolitan war he was defeated and taken prisoner by a fleet of the Genoese, who, as constant enemies of the Catalans in all the naval warfare of the Mediterranean, had willingly lent their aid to the Angevin party. Genoa was at this time subject to Filippo Maria, Duke of Milan, and her royal captive was transmitted to his court. But here the brilliant graces of Alfonso's character won over his conqueror, who had no reason to consider the war as his own concern. The king persuaded him, on the contrary, that a strict alliance with an Aragonese dynasty in Naples against the pretensions of any French claimant would be the true policy and best security of Milan. That city, which he had entered as a prisoner, he left as a friend and ally. From this time Filippo Maria Visconti and Alfonso were firmly united in their Italian politics, and formed one weight of the balance which the republics of Venice and Florence kept in equipoise. After the succession of Sforza to the duchy of Milan the same alliance was generally preserved. Sforza had still more powerful reasons than his predecessor for excluding the French from Italy, his own title being contested by the Duke of Orleans, who derived a claim from his mother Valentine, a daughter of Gian Gale-

I thought it worth notice, however uninteresting these remote intrigues may appear to most readers. Joanna soon changed her mind again, and took no overt steps in favor of Alfonso.

z According to a treaty between Frederic III., King of Sicily, and Joanna I. of Naples, in 1363, the former monarch was to assume the title of King of Trinacria, leaving the original style to the Neapolitan line. But neither he nor his successors in the island ever complied with this condition, or entitled themselves otherwise than kings of Sicily ultra Pharum, in contradistinction to the other kingdom, which they denominated Sicily citra Pharum. Alfonso of Aragon, when he united both these, was the first who took the title King of the Two Sicilies, which his successors have retained ever since. Giannone, t. iii, p. 234.

azzo Visconti. But the two republics were no longer disposed towards war. Florence had spent a great deal without any advantage in her contest with Filippo Maria;[a] and the new Duke of Milan had been the constant personal friend of Cosmo de' Medici, who altogether influenced that republic. At Venice, indeed, he had been regarded with very different sentiments; the senate had prolonged their war against Milan with redoubled animosity after his elevation, deeming him a not less ambitious and formidable neighbor than the Visconti. But they were deceived in the character of Sforza. Conscious that he had reached an eminence beyond his early hopes, he had no care but to secure for his family the possession of Milan, without disturbing the balance of Lombardy. No one better knew than Sforza the faithless temper and destructive politics of the condottieri, whose interest was placed in the oscillations of interminable war, and whose defection might shake the stability of any government. Without peace it was impossible to break that ruinous system, and accustom states to rely upon their natural resources. Venice had little reason to expect further conquests in Lombardy; and if her ambition had aspired the hope of them, she was summoned by a stronger call, that of self-preservation, to defend her numerous and dispersed possessions in the Levant against the arms of Mahomet II. All Italy, indeed, felt the peril that impended from that side; and these various motions occasioned a quadruple league in 1455, between the King of Naples, the Duke of Milan, and the two republics, for the preservation of peace in Italy. One object of this alliance, and the prevailing object with Alfonso, was the implied guarantee of his succession in the kingdom of Naples to his illegitimate son Ferdinand. He had no lawful issue; and there seemed no reason why an acquisition of his own valor should pass against his will to collateral heirs. The pope, as feudal superior of the kingdom, and the Neapolitan parliament, the sole competent tribunal, confirmed the inheritance of Ferdinand.[b] Whatever may be thought of the claims subsisting in the house of Anjou, there can be no question that the reigning family of Aragon were legitimately excluded from the throne of Naples, though force and treachery enabled them ultimately to obtain it.

a The war ending with the peace of Ferrara, in 1428, is said to have cost the republic of Florence 3,500,000 florins. Ammirato, p. 1043.

b Giannone, l. xxvi. c. 2.

Alfonso, surnamed the Magnanimous, was by far the most accomplished sovereign whom the fifteenth century produced. The virtues of chivalry were combined in him with the patronage of letters, and with more than their patronage, a real enthusiasm for learning, seldom found in a king, and especially in one so active and ambitious.[c] This devotion to literature was, among the Italians of that age, almost as sure a passport to general admiration as his more chivalrous perfection. Magnificence in architecture and the pageantry of a splendid court gave fresh lustre to his reign. The Neapolitans perceived with grateful pride that he lived almost entirely among them, in preference to his patrimonial kingdom, and forgave the heavy taxes which faults nearly allied to his virtues, profuseness and ambition, compelled him to impose.[d] But they remarked a very different character in his son. Ferdinand was as dark and vindictive as his father was affable and generous. The barons, who had many opportunities of ascertaining his disposition, began, immediately upon Alfonso's death, to cabal against his succession, turning their eyes first to the legitimate branch of the family, and, on finding that prospect not favorable, to John, titular Duke of Calabria, son of Regnier of Anjou, who survived to protest against the revolution that had dethroned him. [A.D. 1461.] John was easily prevailed upon to undertake an invasion of Naples. Notwithstanding the treaty concluded in 1455, Florence assisted him with money, and Venice at least with her wishes; but Sforza remained unshaken in that alliance with Ferdinand which his clear-sighted policy discerned to be the best safeguard for his own dynasty. A large proportion of the Neapolitan nobility, including Orsini, Prince of Tarento, the most powerful vassal of the crown, raised the banner of Anjou, which was sustained also by the youngest Piccinino, the last of the great condottieri, under whose command the veterans of former warfare rejoiced to serve. But John underwent the fate that had always attended his family in their long competition for that throne. After some brilliant successes, his want of resources, aggravated by the defection of Genoa, on whose ancient enmity to the house of Aragon he had relied, was perceived by the barons of his party, who, ac-

c A story is told, true or false, that his delight in hearing Quintus Curtius read, without any other medicine, cured the king of an illness. See other proofs of his love of letters in Tiraboschi, t. vi. p. 40.

d Giannone, l. xxvi.

cording to the practice of their ancestors, returned one by one to the allegiance of Ferdinand. [A.D. 1464.]

The peace of Italy was little disturbed, except by a few domestic revolutions, for several years after this Neapolitan war.*e* Even the most short-sighted politicians were sometimes withdrawn from selfish objects by the appalling progress of the Turks, though there was not energy enough in their councils to form any concerted plans for their own security. Venice maintained a long but ultimately an unsuccessful contest with Mahomet II. for her maritime acquisitions in Greece and Albania; and it was not till after his death [A.D. 1481] relieved Italy from its immediate terror that the ambitious republic endeavored to extend its territories by encroaching on the house of Este. Nor had Milan shown much disposition towards aggrandizement. Francesco Sforza had been succeeded, such is the condition of despotic governments, by his son Galeazzo, a tyrant more execrable than the worst of the Visconti. His extreme cruelties, and the insolence of a debauchery that gloried in the public dishonor of families, excited a few daring spirits to assassinate him. [A.D. 1476.] The Milanese profited by a tyrannicide the perpetrators of which they had not courage or

e The following distribution of a tax of 458,000 florins, imposed, or rather proposed, in 1464, to defray the expense of a general war against the Turks, will give a notion of the relative wealth and resources of the Italian powers; but it is probable that the pope rated himself above his fair contingent. He was to pay 100,000 florins; the Venetians 100,000; Ferdinand of Naples 80,000; the Duke of Milan 70,000; Florence 50,000; the Duke of Modena 20,000; Siena 15,000; the Marquis of Mantua 10,000; Lucca 8,000; the Marquis of Montferrat 5,000. Sismondi, t. x. p. 229. A similar assessment occurs (p. 307) where the proportions are not quite the same.

Perhaps it may be worth while to extract an estimate of the force of all Christian powers, written about 1454, from Sanulto's Lives of the Doges of Venice, p. 963. Some parts, however, appear very questionable. The King of France, it is said, can raise 30,000 men-at-arms; but for any foreign enterprise only 15,000. The King of England can do the same. These powers are exactly equal; otherwise one of the two would be destroyed. The King of Scotland, "ch' è signore di grandi paesi e popoli con grande povertà," can raise 10,000 men-at-arms: the King of Norway the same; the King of Spain (Castile) 80,000; the King of Portugal 6,000; the Duke of Savoy 8,000; the Duke of Milan 10,000. The republic of Venice can pay from her revenues 10,000; that of Florence 4,000; the Pope 6,000. The Emperor and Empire can raise 60,000; the King of Hungary 80,000 (not men-at-arms, certainly).

The King of France, in 1414, had 2,000,000 ducats of revenue; but now only half. The King of England had then as much; now only 700,000. The King of Spain's revenue also is reduced by the wars from 3,000,000 to 800,000. The Duke of Burgundy had 3,000,000; now 900,000. The Duke of Milan had sunk from 1,000,000 to 500,000; Venice from 1,100,000, which she possessed in 1423, to 800,000; Florence from 400,000 to 200,000.

These statistical calculations, which are not quite accurate as to Venice, and probably much less so as to some other states, are chiefly remarkable as they manifest that comprehensive spirit of treating all the powers of Europe as parts of a common system which began to actuate the Italians of the fifteenth century. Of these enlarged views of policy the writings of Aeneas Sylvius afford an eminent instance. Besides the more general and insensible causes, the increase of navigation and revival of literature, this may be ascribed to the continual danger from the progress of the Ottoman arms, which led the politicians of that part of Europe most exposed to them into more extensive views as to the resources and dispositions of Christian states.

gratitude to protect. The regency of Bonne of Savoy, mother of the infant Duke Gian Galeazzo, deserved the praise of wisdom and moderation. But it was overthrown in a few years by Ludovico Sforza, surnamed the Moor, her husband's brother; who, while he proclaimed his nephew's majority and affected to treat him as a sovereign, hardly disguised in his conduct towards foreign states that he had usurped for himself the sole direction of government. [A.D. 1480.]

The annals of one of the few surviving republics, that of Genoa, present to us, during the fifteenth as well as the preceding century, an unceasing series of revolutions, the shortest enumeration of which would occupy several pages. Torn by the factions of Adorni and Fregosi, equal and eternal rivals, to whom the whole patrician families of Doria and Fieschi were content to become secondary, sometimes sinking from weariness of civil tumult into the grasp of Milan or France, and again, from impatience of foreign subjection, starting back from servitude to anarchy, the Genoa of those ages exhibits a singular contrast to the calm and regular aristocracy of the next three centuries. The latest revolution within the compass of this work was in 1488, when the Duke of Milan became sovereign, and Adorno holding the office of doge as his lieutenant.

Florence, the most illustrious and fortunate of Italian republics, was now rapidly descending from her rank among free commonwealths, though surrounded with more than usual lustre in the eyes of Europe. We must take up the story of that city from the revolution of 1382, which restored the ancient Guelf aristocracy, or party of the Albizi, to the ascendency of which a popular insurrection had stripped them. Fifty years elapsed during which this party retained the government in its own hands with few attempts at disturbance. Their principal adversaries had been exiled, according to the invariable and perhaps necessary custom of a republic; the populace and inferior artisans were dispirited by their ill success. Compared with the leaders of other factions, Maso degl' Albizi, and Nicola di Uzzano, who succeeded him in the management of his party, were attached to a constitutional liberty. Yet so difficult is it for any government which does not rest on a broad basis of public consent to avoid injustice, that they twice deemed it necessary to violate the ancient constitution. In 1393, after a partial movement in behalf of the vanquished faction, they

assembled a parliament, and established what was technically called at Florence a balia.[f] This was a temporary delegation of sovereignty to a number, generally a considerable number, of citizens, who during the period of their dictatorship named the magistrates, instead of drawing them by lot, and banished suspected individuals. A precedent so dangerous was eventually fatal to themselves and to the freedom of their country. Besides this temporary balia, the regular scrutinies periodically made in order to replenish the bags out of which the names of all magistrates were drawn by lot, according to the constitution established in 1328, were so managed as to exclude all persons disaffected to the dominant faction. But, for still greater security, a council of two hundred was formed in 1411, out of those alone who had enjoyed some of the higher offices within the last thirty years, the period of the aristocratical ascendency, through which every proposition was to pass before it could be submitted to the two legislative councils.[g] These precautions indicate a government conscious of public enmity; and if the Albizi had continued to sway the republic of Florence, their jealousy of the people would have suggested still more innovations, till the constitution had acquired, in legal form as well as substance, an absolutely aristocratical character.

But, while crushing with deliberate severity their avowed adversaries, the ruling party had left one family whose prudence gave no reasonable excuse for persecuting them, and whose popularity as well as wealth rendered the experiment hazardous. The Medici were among the most considerable of the new or plebeian nobility. From the first years of the fourteenth century their name not very unfrequently occurs in the domestic and military annals of Florence.[h] Salvestro de' Medici, who had been partially implicated in the democratical revolution that lasted from 1378 to 1382, escaped proscription on the revival of the Guelf party, though some of his family were afterwards banished. Throughout the long depression of the popular faction the house of Medici was always regarded as their consolation and their hope. That house was now represented by Giovanni,[i] whose immense wealth, honorably

[f] Ammirato, p. 840.

[g] Ib. p. 961.

[h] The Medici are enumerated by Villani among the chiefs of the Black faction in 1304, l. viii. c. 71. One of that family was beheaded by order of the Duke of Athens in 1343, l. xii. c. 2. It is singular that Mr. Roscoe should refer their first appearance in history, as he seems to do, to the siege of Scarperia in 1351.

[i] Giovanni was not nearly related to Salvestro de' Medici. Their families are said per lungo tratto allontanarsi.

acquired by commercial dealings, which had already rendered the name celebrated in Europe, was expended with liberality and magnificence. Of a mild temper, and averse to cabals, Giovanni de' Medici did not attempt to set up a party, and contented himself with repressing some fresh encroachments on the popular part of the constitution which the Albizi were disposed to make.*j* They, in their turn, freely admitted him to that share in public councils to which he was entitled by his eminence and virtues; a proof that the spirit of their administration was not illiberally exclusive. But, on the death of Giovanni, his son Cosmo de' Medici, inheriting his father's riches and estimation, with more talents and more ambition, thought it time to avail himself of the popularity belonging to his name. By extensive connections with the most eminent men in Italy, especially with Sforza, he came to be considered as the first citizen of Florence. The oligarchy were more than ever unpopular. Their administration since 1382 had indeed been in general eminently successful; the acquisition of Pisa and of other Tuscan cities had aggrandized the republic, while from the port of Leghorn her ships had begun to trade with Alexandria, and sometimes to contend with the Genoese.*k* But an unprosperous war with Lucca diminished a reputation which was never sustained by public affection. Cosmo and his friends aggravated the errors of the government, which, having lost its wise and temperate leader Nicola di Uzzano, had fallen into the rasher hands of Rinaldo degl' Albizi. He incurred the blame of being the first aggressor in a struggle which had become inevitable. Cosmo was arrested by command of a gonfalonier devoted to the Albizi, and condemned to banishment. [A.D. 1433.] But the oligarchy had done too much or too little. The city was full of his friends; the honors conferred upon him in his exile attested the sentiments of Italy. Next year he was

Ammirato, p. 992. Nevertheless his being drawn gonfalonier in 1421 created a great sensation in the city, and prepared the way to the subsequent revolution, Ibid. Machiavelli, l. iv.

j Machiavelli, Istoria Fiorent. l. iv.

k The Florentines sent their first merchant-ship to Alexandria in 1422, with great and anxious hopes. Prayers were ordered for the success of the republic by sea, and an embassy despatched with presents to conciliate the Sultan of Babylon, that is, of Grand Cairo. Ammirato, p. 997. Florence had never before been so wealthy. The circulating money was reckoned (perhaps extravagantly) at 4,000,000 florins. The manufactures of silk and cloth of gold had never flourished so much. Architecture shone under Brunelleschi; literature under Leonard Aretin and Filelfo: p. 977. There is some truth in M. Sismondi's remark, that the Medici have derived part of their glory from their predecessors in government, whom they subverted, and whom they have rendered obscure. But the Milanese war, breaking out in 1423, tended a good deal to impoverish the city.

recalled in triumph to Florence, and the Albizi were completely overthrown.

It is vain to expect that a victorious faction will scruple to retaliate upon its enemies a still greater measure of injustice than it experienced at their hands. The vanquished have no rights in the eyes of a conqueror. The sword of returning exiles, flushed by victory and incensed by suffering, falls successively upon their enemies, upon those whom they suspect of being enemies, upon those who may hereafter become such. The Albizi had in general respected the legal forms of their free republic, which good citizens, and perhaps themselves, might hope one day to see more effective. The Medici made all their government conducive to hereditary monarchy. A multitude of noble citizens were driven from their country; some were even put to death. A balia was appointed for ten years to exclude all the Albizi from magistracy, and, for the sake of this security to the ruling faction, to supersede the legitimate institutions of the republic. After the expiration of this period the dictatorial power was renewed on pretence of fresh danger, and this was repeated six times in twenty-one years.[l] In 1455 the constitutional mode of drawing magistrates was permitted to revive, against the wishes of some of the leading party. They had good reason to be jealous of a liberty which was incompatible with their usurpation. The gonfaloniers, drawn at random from among respectable citizens, began to act with an independence to which the new oligarchy was little accustomed. Cosmo, indeed, the acknowledged chief of the party, perceiving that some who had acted in subordination to him were looking forward to the opportunity of becoming themselves its leaders, was not unwilling to throw upon them the unpopularity attached to an usurpation by which he had maintained his influence. Without his apparent participation, though not against his will, the free constitution was again suspended by a balia appointed for the nomination of magistrates; and the regular drawing of names by lot seems never to have been restored.* Cosmo died at an advanced age in 1464. His son, Piero de' Medici, though not deficient in either virtues or abilities, seemed too infirm in health for the administration of public affairs. At least, he could only be chosen by a sort of hereditary title which the party above mentioned,

[l] Machiavelli, l. v.; Ammirato.

* Ammirato, t. ii. pp. 82-87.

some from patriotic, more from selfish motives, were reluctant to admit. A strong opposition was raised to the family pretensions of the Medici. Like all Florentine factions, it trusted to violence; and the chance of arms was not in its favor. From this revolution in 1466, when some of the most considerable citizens were banished, we may date an acknowledged supremacy in the house of Medici, the chief of which nominated the regular magistrates, and drew to himself the whole conduct of the republic.*

The two sons of Piero, Lorenzo and Julian, especially the former, though young at their father's death, assumed, by the request of their friends, the reins of government. [A.D. 1469.] It was impossible that, among a people who had so many recollections to attach to the name of liberty, among so many citizens whom their ancient constitution invited to public trust, the control of a single family should excite no dissatisfaction; and perhaps their want of any positive authority heightened the appearance of usurpation in their influence. But, if the people's wish to resign their freedom gives a title to accept the government of a country, the Medici were no usurpers. That family never lost the affections of the populace. The cry of Palle, Palle (their armorial distinction), would at any time rouse the Florentines to defend the chosen patrons of the republic. If their substantial influence could before be questioned, the conspiracy of the Pazzi, wherein Julian perished, excited an enthusiasm for the surviving brother, that never ceased during his life. Nor was this anything unnatural, or any severe reproach to Florence. All around, in Lombardy and Romagna, the lamp of liberty had long since been extinguished in blood. The freedom of Siena and Genoa was dearly purchased by revolutionary proscriptions; that of Venice was only a name. The republic which had preserved longest, and with greatest purity, that vestal fire, had at least no relative degradation to fear in surrendering herself to Lorenzo de' Medici. I need not in this place expatiate upon what the name instantly suggests, the patronage of science and art, and the constellation of scholars and poets, or architects and painters, whose reflected beams cast their radiance around his head. His political reputation, though far less durable, was in his own age as conspicuous as

* Ammirato, p. 93; Roscoe's Lorenzo de'Medici, ch. 2; Machiavelli; Sismondi. The two latter are perpetual references in this part of history, where no other is made.

that which he acquired in the history of letters. Equally active and sagacious, he held his way through the varying combination of Italian policy, always with credit, and generally with success. Florence, if not enriched, was upon the whole aggrandized during his administration, which was exposed to some severe storms from the unscrupulous adversaries, Sixtus IV. and Ferdinand of Naples, whom he was compelled to resist. As a patriot, indeed, we never can bestow upon Lorenzo de' Medici the meed of disinterested virtue. He completed that subversion of the Florentine republic which his two immediate ancestors had so well prepared. The two councils, her regular legislature, he superseded by a permanent senate of seventy persons; *m* while the gonfalonier and priors, become a mockery and pageant to keep up the illusion of liberty, were taught that in exercising a legitimate authority without the sanction of their prince, a name now first heard at Florence, they incurred the risk of punishment for their audacity.*n* Even the total dilapidation of his commercial wealth was repaired at the cost of the state; and the republic disgracefully screened the bankruptcy of the Medici by her own.*o* But compared with the statesmen of his age, we can reproach Lorenzo with no heinous crime. He had many enemies; his descendants had many

m Ammirato, p. 145. Machiavelli says (l. viii.) that this was done ristringere il governo, e che le deliberazioni importanti si riducessero in minore numero. But though it rather appears from Ammirato's expressions that the two councils were now abolished, yet from M. Sismondi, t. xi. p. 186, who quotes an author I have not seen, and from Nardi, p. 7, I should infer that they still formally subsisted.

n Cambi, a gonfalonier of justice, had, in concert with the priors, admonished some public officers for a breach of duty. Fu giudicato questo atto molto superbo, says Ammirato, che senza partecipazione di Lorenzo de' Medici, principe del governo, fosse seguito, che in Pisa in quel tempo si ritrovava. p. 184. The gonfalonier was fined for executing his constitutional functions. This was a downright confession that the republic was at an end; and all it provokes M. Sismondi to say is not too much, t. xi. p. 345.

o Since the Medici took on themselves the character of princes, they had forgotten how to be merchants. But, imprudently enough, they had not discontinued their commerce, which was of course mismanaged by agents whom they did not overlook. The consequence was the complete dilapidation of their vast fortune. The public revenues had been for some years applied to make up its deficiencies. But from the measures adopted by the republic, if we may still use that name, she should appear to have considered herself, rather than Lorenzo, as the debtor. The interest of the public debt was diminished one half. Many charitable foundations were suppressed. The circulating specie was taken at one fifth below its nominal value in payment of taxes, while the government continued to issue it at its former rate. Thus was Lorenzo reimbursed a part of his loss at the expense of all his fellow-citizens. Sismondi, t. xi. p. 347. It is slightly alluded to by Machiavelli.

The vast expenditure of the Medici for the sake of political influence would of itself have absorbed all their profits. Cosmo is said by Guicciardini to have spent 400,000 ducats in building churches, monasteries, and other public works, l. i. p. 91. The expenses of the family between 1434 and 1471, in buildings, charities, and taxes alone, amounted to 663,755 florins; equal in value, according to Sismondi, to 32,000,000 francs at present. Hist. des Républ. t. x. p. 173. They seem to have advanced moneys imprudently, through their agents, to Edward IV., who was not the best of debtors. Comines, Mém. de Charles VIII., l. vii. c. 6.

more; but no unequivocal charge of treachery or assassination has been substantiated against his memory. By the side of Galeazzo or Ludovico Sforza, of Ferdinand or his son Alfonso of Naples, of the pope Sixtus IV., he shines with unspotted lustre. So much was Lorenzo esteemed by his contemporaries, that his premature death [A.D. 1492] has frequently been considered as the cause of those unhappy revolutions that speedily ensued, and which his foresight would, it was imagined, have been able to prevent; an opinion which, whether founded in probability or otherwise, attests the common sentiment about his character.

If indeed Lorenzo de' Medici could not have changed the destinies of Italy, however premature his death may appear if we consider the ordinary duration of human existence, it must be admitted that for his own welfare, perhaps for his glory, he had lived out the full measure of his time. An age of new and uncommon revolutions was about to arise, among the earliest of which the temporary downfall of his family was to be reckoned. The long-contested succession of Naples was again to involve Italy in war. The ambition of strangers was once more to desolate her plains. Ferdinand King of Naples had reigned for thirty years after the discomfiture of his competitor with success and ability; but with a degree of ill faith as well as tyranny towards his subjects that rendered his government deservedly odious. His son Alfonso, whose succession seemed now near at hand, was still more marked by these vices than himself.[p] Meanwhile, the pretensions of the house of Anjou had legally descended, after the death of old Regnier, to Regnier Duke of Lorraine, his grandson by a daughter; whose marriage into the house of Lorraine had, however, so displeased her father, that he bequeathed his Neapolitan title, along with his real patrimony, the county of Provence, to a count of Maine; by whose testament they became vested in the crown of France. Louis XI., while he took possession of Provence, gave himself no trouble about Naples. But Charles VIII., inheriting his father's ambition without that cool sagacity which restrained it in general from impracticable attempts, and far better circumstanced at home than Louis had ever been, was ripe for an expedition to vindicate his pretensions

[p] Comines, who speaks sufficiently ill of the father, sums up the son's character very concisely. Nul homme n'a este plus cruel que lui, ne plus mauvais, ne plus vicieux et plus infect, ne plus guormand que lui. l. vii. c. 13.

upon Naples, or even for more extensive projects. It was now two centuries since the kings of France had begun to aim, by intervals, at conquests in Italy. Philip the Fair and his successors were anxious to keep up a connection with the Guelf party, and to be considered its natural heads, as the German emperors were of the Ghibelins. The long English wars changed all views of the court of France to self-defence. But in the fifteenth century its plans of aggrandizement beyond the Alps began to revive. Several times, as I have mentioned, the republic of Genoa put itself under the dominion of France. The dukes of Savoy, possessing most part of Piedmont, and masters of the mountain-passes, were, by birth, intermarriage, and habitual policy, completely dedicated to the French interests.*q* In the former wars of Ferdinand against the house of Anjou, Pope Pius II., a very enlightened statesman, foresaw the danger of Italy from the prevailing influence of France, and deprecated the introduction of her armies.*r* But at that time the central parts of Lombardy were held by a man equally renowned as a soldier and a politician, Francesco Sforza. Conscious that a claim upon his own dominions subsisted in the house of Orleans, he maintained a strict alliance with the Aragonese dynasty at Naples, as having a common interest against France. But after his death the connection between Milan and Naples came to be weakened. In the new system of alliances Milan and Florence, sometimes including Venice, were combined against Ferdinand and Sixtus IV., an unprincipled and restless pontiff. Ludovico Sforza, who had usurped the guardianship of his nephew the Duke of Milan, found, as that young man advanced to maturity, that one crime required to be completed by another. To depose and murder his ward was, however, a scheme that prudence, though not conscience,

q Denina, Storia dell' Italia Occidentale, t. ii. passim. Louis XI. treated Savoy as a fief of France; interfering in all its affairs, and even taking on himself the regency after the death of Philibert I., under pretence of preventing disorders, p. 185. The Marquis of Saluzzo, who possessed considerable territories in the south of Piedmont, had done homage to France ever since 1353 (p. 40), though to the injury of his real superior, the Duke of Savoy. This gave France another pretext for interference in Italy. p. 187.

r Cosmo de' Medici, in a conference with Pius II. at Florence, having expressed his surprise that the pope should support Ferdinand: Pontifex haud ferendum fuisse ait, regem a se constitutum, armis ejici, neque id Italiæ libertati conducere; Gallos, si regnum obtinuissent Senas haud dubiè subacturos; Florentinos adversus lilia nihil acturos; Borsium Mutinæ ducem Gallis galliorem videri; Flaminiæ regulos ad Francos inclinare Genuam Francis subesse, et civitatem Astensem; si pontifex Romanus aliquando Francorum amicus assumatur, nihil reliqui in Italiâ remanere quod non transeat in Gallorum nomen; tueri se Italiam, dum Ferdinandum tueretur. Commentar. Pii Secundi, l. iv. p. 96. Spondamus, who led me to this passage, is very angry; but the year 1494 proved Pius II. to be a wary statesman.

bade him hesitate to execute. He had rendered Ferdinand of Naples and Piero de' Medici, Lorenzo's heir, his decided enemies. A revolution at Milan would be the probable result of his continuing in usurpation. In these circumstances Ludovico Sforza excited the King of France to undertake the conquest of Naples.*s* [A.D. 1439.]

So long as the three great nations of Europe were unable to put forth their natural strength through internal separation or foreign war, the Italians had so little to dread for their independence, that their policy was altogether directed to regulating the domestic balance of power among themselves. In the latter part of the fifteenth century a more enlarged view of Europe would have manifested the necessity of reconciling petty animosities, and sacrificing petty ambition, in order to preserve the nationality of their governments; not by attempting to melt down Lombards and Neapolitans, principalities and republics, into a single monarchy, but by the more just and rational scheme of a common federation. The politicians of Italy were abundantly competent, as far as cool and clear understandings could render them, to perceive the interests of their country. But it is the will of Providence that the highest and surest wisdom, even in matters of policy, should never be unconnected with virtue. In relieving himself from an immediate danger, Ludovico Sforza overlooked the consideration that the presumptive heir of the King of France claimed by an ancient title that principality of Milan which he was compassing by usurpation and murder. But neither Milan nor Naples was free from other claimants than France, nor was she reserved to enjoy unmolested the spoil of Italy. A louder and a louder strain of warlike dissonance will be heard from the banks of the Danube, and from the Mediterranean gulf. The dark and wily Ferdinand, the rash and lively Maximilian, are preparing to hasten into the lists; the schemes of ambition are assuming a more comprehensive aspect; and the controversy of Neapolitan succession is to expand into the long rivalry between the houses of France and Austria. But here, while Italy is still untouched, and before as yet the first lances of France gleam along the defiles of the Alps, we close the history of the Middle Ages.

s Guicciardini, l. i.

BOOK IV.

HISTORY OF SPAIN.

THE LAST PRAYER.

(Christian Martyrs in the Coliseum.)

Photogravure from the original painting by J. L. Gérôme.

BOOK IV.

THE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA.

Kingdom of the Visigoths—Conquest of Spain by the Moors—Gradual Revival of the Spanish Nation—Kingdoms of Leon, Aragon, Navarre, and Castile, successively formed—Chartered Towns of Castile—Military Orders—Conquest of Ferdinand III. and James of Aragon—Causes of the Delay in expelling the Moors—History of Castile continued—Character of the Government—Peter the Cruel—House of Trastamare—John II.—Henry IV.—Constitution of Castile—National Assemblies or Cortes—their constituent Parts—Right of Taxation—Legislation—Privy Council of Castile—Laws for the Protection of Liberty—Imperfections of the Constitution—Aragon—its History in the fourteenth and fifteenth Centuries—disputed Succession—Constitution of Aragon—Free Spirit of its Aristocracy—Privilege of Union—Powers of the Justiza—Legal Securities—Illustrations—other Constitutional Laws—Valencia and Catalonia—Union of two Crowns by the Marriage of Ferdinand and Isabella—Conquest of Granada.

The history of Spain during the middle ages ought to commence with the dynasty of the Visigoths; a nation among the first that assaulted and overthrew the Roman Empire, and whose establishment preceded by nearly half a century the invasion of Clovis. Vanquished by that conqueror in the battle of Poitiers, the Gothic monarchs lost their extensive dominions in Gaul, and transferred their residence from Toulouse to Toledo. But I will not detain the reader by naming one sovereign of that obscure race. It may suffice to mention that the Visigothic monarchy differed in several respects from that of the Franks during the same period. The crown was less hereditary, or at least the regular succession was more frequently disturbed. The prelates had a still more commanding influence in temporal government. The distinction of Romans and barbarians was less marked, the laws more uniform, and approaching nearly to the imperial code. The power of the sovereign was perhaps more limited by an aristocratical council than in France, but it never yielded to the dangerous

influence of mayors of the palace. Civil wars and disputed successions were very frequent, but the integrity of the kingdom was not violated by the custom of partition.

Spain, after remaining for nearly three centuries in the possession of the Visigoths, fell under the yoke of the Saracens in 712. The fervid and irresistible enthusiasm which distinguished the youthful period of Mohammedism might sufficiently account for this conquest, even if we could not assign additional causes—the factions which divided the Goths, the resentment of disappointed pretenders to the throne, the provocations, as has been generally believed, of Count Julian, and the temerity that risked the fate of an empire on the chances of a single battle.[a] It is more surprising that a remnant of this ancient monarchy should not only have preserved its national liberty and name in the northern mountains, but waged for some centuries a successful, and generally an offensive warfare against the conquerors, till the balance was completely turned in its favor, and the Moors were compelled to maintain almost as obstinate and protracted a contest for a small portion of the peninsula. But the Arabian monarchs of Cordova found in their success and imagined security a pretext for indolence; even in the cultivation of science and contemplation of the magnificent architecture of their mosques and palaces they forgot their poor but daring enemies in the Asturias; while, according to the nature of despotism, the fruits of wisdom or bravery in one generation were lost in the follies and effeminacy of the next. Their kingdom was dismembered by successful rebels, who formed the states of Toledo, Huesca, Saragossa, and others less eminent; and these, in their own mutual contests, not only relaxed their natural enmity towards the Christian princes, but sometimes sought their alliance.[b]

The last attack which seemed to endanger the reviving monarchy of Spain was that of Almanzor, the illustrious vizier of Haccham II., towards the end of the tenth century, wherein the city of Leon, and even the shrine of Compostella, were burned to the ground. For some ages before this transient reflux, gradual encroachments had been made upon the Saracens, and the kingdom originally styled of Oviedo, the seat of which was removed to Leon in 914, had extended its boundary to the

a [Note.]

b Cardonne, Histoire de l'Afrique et de l'Espagne.

Douro, and even to the mountainous chain of the Guadarrama. The province of Old Castile, thus denominated, as is generally supposed, from the castles erected while it remained a march or frontier against the Moors, was governed by hereditary counts, elected originally by the provincial aristocracy, and virtually independent, it seems probable, of the kings of Leon, though commonly serving them in war as brethren of the same faith and nation.*c*

While the kings of Leon were thus occupied in recovering the western provinces, another race of Christian princes grew up silently under the shadow of the Pyrenean mountains. Nothing can be more obscure than the beginnings of those little states which were formed in Navarre and the country of Soprarbe. They might perhaps be almost contemporaneous with the Moorish conquests. On both sides of the Pyrenees dwelt an aboriginal people, the last to undergo the yoke, and who had never acquired the language, of Rome. We know little of these intrepid mountaineers in the dark period which elapsed under the Gothic and Frank dynasties, till we find them cutting off the rear-guard of Charlemagne in Roncesvalles, and maintaining at least their independence, though seldom, like the kings of Asturias, waging offensive war against the Saracens. The town of Jaca, situated among long narrow valleys that intersect the southern ridges of the Pyrenees, was the capital of a little free state, which afterwards expanded into the monarchy of Aragon.*d* A territory rather more extensive

c According to Roderic of Toledo, one of the earliest Spanish historians, though not older than the beginning of the thirteenth century, the nobles of Castile, in the reign of Froila, about the year 924, sibi et posteris providerunt, et duos milites non de potentioribus, sed de prudentioribus elegerunt, quos et judices statuerunt, ut dissensiones patriæ et querelantium causæ suo judicio sopirentur. l. v. c. 1. Several other passages in the same writer prove that the counts of Castile were nearly independent of Leon, at least from the time of Ferdinand Gonsalvo about the middle of the tenth century. Ex quo iste suscepit suæ patriæ comitatum, cessaverunt reges Asturiarum insolescere in Castellam, et a flumine Piscoricâ nihil amplius vindicârunt, l. v. c. 2. Marina, in his Ensayo Historico-Critico, is disposed to controvert this fact.

d The Fueros, or written laws of Jaca, were perhaps more ancient than any local customary in Europe. Alfonso III. confirms them by name of the ancient usages of Jaca. They prescribe the descent of lands and movables, as well as the election of municipal magistrates. The following law, which enjoins the rising in arms on a sudden emergency illustrates, with a sort of romantic wildness, the manners of a pastoral but warlike people, and reminds us of a well-known passage in the Lady of the Lake. De appellitis ita statuimus. Cum homines de villis, vel qui stant in montanis cum suis ganatis [gregibus], audierint appellitum; omnes capiant arma, et dimissis ganatis, et omnibus aliis suis faziendis [negotiis] sequantur appellitum. Et si illi qui fuerint magis remoti, invenerint in villâ magis proximâ appellito, [deest aliquid?] omnes qui nondum fuerint egressi tunc villam illam, quæ tardius secuta est appellitum, pecent [solvant] unam beccam [vaccam]; et unusquisque homo ex illis qui tardius secutus est appellitum, et quem magis remoti præcesserint, pecet tres solidos, quomodo nobis videbitur, partiendos. Tamen in Jacâ et in aliis villis, sint aliqui

belonged to Navarre, the kings of which fixed their seat at Pampelona. Biscay seems to have been divided between this kingdom and that of Leon. The connection of Aragon or Soprarbe and Navarre was very intimate, and they were often united under a single chief.

At the beginning of the eleventh century, Sancho the Great, king of Navarre and Aragon, was enabled to render his second son Ferdinand count, or, as he assumed the title, king of Castile. This effectually dismembered that province from the kingdom of Leon; but their union soon became more complete than ever, though with a reversed supremacy. Bermudo III., king of Leon, fell in an engagement with the new king of Castile, who had married his sister; and Ferdinand, in her right, or in that of conquest, became master of the united monarchy. This cessation of hostilities between the Christian states enabled them to direct a more unremitting energy against their ancient enemies, who were now sensibly weakened by the various causes of decline to which I have already alluded. During the eleventh century the Spaniards were almost always superior in the field; the towns which they began by pillaging, they gradually possessed; their valor was heightened by the customs of chivalry and inspired by the example of the Cid; and before the end of this age Alfonso VI. recovered the ancient metropolis of the monarchy, the city of Toledo. This was the severest blow which the Moors had endured, and an unequivocal symptom of that change in their relative strength, which, from being so gradual, was the more irretrievable. Calamities scarcely inferior fell upon them in a different quarter. The Kings of Aragon (a title belonging originally to a little district upon the river of that name) had been cooped up almost in the mountains by the small Moorish states north of the Ebro, especially that of Huesca. About the middle of the eleventh century they began to attack their neighbors with success; the Moors lost one town after another, till, in 1118, exposed and weakened by the reduction of all these places, the city of Saragossa, in which a line of Mohammedan princes had flourished for several ages, became the prize of Alfonso I. and the capital of his kingdom. The southern parts of what is now the province of Aragon were successively re-

nominati et certi, quos elegerint consules, qui remaneant ad villas custodiendas et defendendas. Biancæ Commentaria, in Schotti Hispania Illustrata. p. 595.

duced during the twelfth century; while all new Castile and Estremadura became annexed in the same gradual manner to the dominion of the descendants of Alfonso VI.

Although the feudal system cannot be said to have obtained in the kingdoms of Leon and Castile, their peculiar situation gave the aristocracy a great deal of the same power and independence which resulted in France and Germany from that institution. The territory successively recovered from the Moors, like waste lands reclaimed, could have no proprietor but the conquerors, and the prospect of such acquisitions was a constant incitement to the nobility of Spain, especially to those who had settled themselves on the Castilian frontier. In their new conquests they built towns and invited Christian settlers, the Saracen inhabitants being commonly expelled or voluntarily retreating to the safer provinces of the south. Thus Burgos was settled by a Count of Castile about 880; another fixed his seat at Osma; a third at Sepulveda; a fourth at Salamanca. These cities were not free from incessant peril of a sudden attack till the union of the two kingdoms under Ferdinand I., and consequently the necessity of keeping in exercise a numerous and armed population, gave a character of personal freedom and privilege to the inferior classes which they hardly possessed at so early a period in any other monarchy. Villeinage seems never to have been established in the Hispano-Gothic kingdoms, Leon and Castile; though I confess it was far from being unknown in that of Aragon, which had formed its institutions on a different pattern. Since nothing makes us forget the arbitrary distinctions of rank so much as participation in any common calamity, every man who had escaped the great shipwreck of liberty and religion in the mountains of Asturias was invested with a personal dignity, which gave him value in his own eyes and those of his country. It is probably this sentiment transmitted to posterity, and gradually fixing the national character, that has produced the elevation of manner remarked by travellers in the Castilian peasant. But while these acquisitions of the nobility promoted the grand object of winning back the peninsula from its invaders, they by no means invigorated the government or tended to domestic tranquillity.

A more interesting method of securing the public defence was by the institution of chartered towns or communities.

These were established at an earlier period than in France and England, and were, in some degree, of a peculiar description. Instead of purchasing their immunities, and almost their personal freedom, at the hands of a master, the burgesses of Castilian towns were invested with civil rights and extensive property on the more liberal condition of protecting their country. The earliest instance of the erection of a community is in 1020, when Alfonso V. in the cortes at Leon established the privileges of that city with a regular code of laws, by which its magistrates should be governed. The citizens of Carrion, Llanes, and other towns were incorporated by the same prince. Sancho the Great gave a similar constitution to Naxara. Sepulveda had its code of laws in 1076 from Alfonso VI.; in the same reign Logroño and Sahagun acquired their privileges, and Salamanca not long afterwards. The fuero, or original charter of a Spanish community, was properly a compact, by which the king or lord granted a town and adjacent district to the burgesses, with various privileges, and especially that of choosing magistrates and a common council, who were bound to conform themselves to the laws prescribed by the founder. These laws, civil as well as criminal, though essentially derived from the ancient code of the Visigoths, which continued to be the common law of Castile till the fourteenth or fifteenth century, varied from each other in particular usages, which had probably grown up and been established in these districts before their legal confirmation. The territory held by chartered towns was frequently very extensive, far beyond any comparison with corporations in our own country or in France; including the estates of private landholders, subject to the jurisdiction and control of the municipality as well as its inalienable demesnes, allotted to the maintenance of the magistrates and other public expenses. In every town the king appointed a governor to receive the usual tributes and watch over the police and the fortified places within the district; but the administration of justice was exclusively reserved to the inhabitants and their elected judges. Even the executive power of the royal officer was regarded with jealousy; he was forbidden to use violence towards any one without legal process; and, by the fuero of Logroño, if he attempted to enter forcibly into a private house he might be killed with impunity. These democratical customs were altered in the fourteenth

century by Alfonso XI., who vested the municipal administration in a small number of jurats, or regidors. A pretext for this was found in some disorders to which popular elections had led; but the real motive, of course, must have been to secure a greater influence for the crown, as in similar innovations of some English kings.

In recompense for such liberal concessions the incorporated towns were bound to certain money payments, and to military service. This was absolutely due from every inhabitant, without dispensation or substitution, unless in case of infirmity. The royal governor and the magistrates, as in the simple times of primitive Rome, raised and commanded the militia; who, in a service always short, and for the most part necessary, preserved that delightful consciousness of freedom, under the standard of their fellow citizens and chosen leaders, which no mere soldier can enjoy. Every man of a certain property was bound to serve on horseback, and was exempted in return from the payment of taxes. This produced a distinction between the *caballeros*, or noble class, and the *pecheros*, or payers of tribute. But the distinction appears to have been founded only upon wealth, as in the Roman equites, and not upon hereditary rank, though it most likely prepared the way for the latter. The horses of these caballeros could not be seized for debt; in some cases they were exclusively eligible to magistracy; and their honor was protected by laws which rendered it highly penal to insult or molest them. But the civil rights of rich and poor in courts of justice were as equal as in England.*e*

The progress of the Christian arms in Spain may in part be ascribed to another remarkable feature in the constitution of that country, the military orders. These had already been tried with signal effect in Palestine; and the similar circumstances of Spain easily led to an adoption of the same policy. In a very few years after the first institution of the Knights Templars, they were endowed with great estates, or rather districts, won from the Moors, on condition of defending their own and the national territory. These lay chiefly in the parts of

e I am indebted for this account of municipal towns in Castile to a book published at Madrid in 1808, immediately after the revolution, by the Doctor Marina, a canon of the church of St. Isidor, entitled, Ensayo Historico-Critico sobre la antigua legislacion y principales cuerpos legales de los reynos de Lyon y Castilla, especialmente sobre el codigo de D. Alonso el Sabio, conocido con el nombre de las Siete Partidas. This work is perhaps not readily to be procured in England: but an article in the Edinburgh Review, No. XLIII., will convey a sufficient notion of its contents.

Aragon beyond the Ebro, the conquest of which was then recent and insecure.[f] So extraordinary was the respect for this order and that of St. John, and so powerful the conviction that the hope of Christendom rested upon their valor, that Alfonso the First, king of Aragon, dying childless, bequeathed to them his whole kingdom; an example of liberality, says Mariana, to surprise future times and displease his own.[g] The states of Aragon annulled, as may be supposed, this strange testament; but the successor of Alfonso was obliged to pacify the ambitious knights by immense concessions of money and territory; stipulating even not to make peace with the Moors against their will.[h] In imitation of these great military orders common to all Christendom, there arose three Spanish institutions of a similar kind, the orders of Calatrava, Santiago, and Alcantara. The first of these was established in 1158; the second and most famous had its charter from the pope in 1175, though it seems to have existed previously; the third branched off from that of Calatrava at a subsequent time.[i] These were military colleges, having their walled towns in different parts of Castile, and governed by an elective grand master, whose influence in the state was at least equal to that of any of the nobility. In the civil dissensions of the fourteenth and fifteenth centuries, the chiefs of these incorporated knights were often very prominent.

The kingdoms of Leon and Castille were unwisely divided anew by Alfonso VII. between his sons Sancho and Ferdinand, and this produced not only a separation but a revival of the ancient jealousy with frequent wars for near a century. At length, in 1238, Ferdinand III., king of Castile, reunited forever the two branches of the Gothic monarchy. He employed their joint strength against the Moors, whose dominion, though it still embraced the finest provinces of the peninsula, was sinking by internal weakness, and had never recovered a tremendous defeat at Banos di Toloso, a few miles from Baylen, in 1210.[j] Ferdinand, bursting into Andalusia, took its great capital, the city of Cordova, not less ennobled by the cultivation of Arabian science, and by the names of Avicenna and

[f] Mariana, Hist. Hispan. l. x. c. 10.
[g] l. x. c. 15.
[h] l. x. c. 18.
[i] l. xi. c. 6, 13; l. xii. c. 3.
[j] A letter of Alfonso IX., who gained this victory, to Pope Innocent III., puts the loss of the Moors at 180,000 men. The Arabian historians, though without specifying numbers, seem to confirm this immense slaughter, which nevertheless it is difficult to conceive before the invention of gunpowder, or indeed since. Cardonne, t. ii. p. 327.

Averroes, than by the splendid works of a rich and munificent dynasty.[k] [A.D. 1236.] In a few years more Seville was added to his conquests, and the Moors lost their favorite regions on the banks of the Guadalquivir. James I. of Aragon, the victories of whose long reign gave him the surname of Conqueror, reduced the city and kingdom of Valencia, the Balearic isles, and the kingdom of Murcia; but the last was annexed, according to compact, to the crown of Castile.

It could hardly have been expected about the middle of the thirteenth century, when the splendid conquests of Ferdinand and James had planted the Christian banner on the three principal Moorish cities, that two hundred and fifty years were yet to elapse before the rescue of Spain from their yoke should be completed. Ambition, religious zeal, national enmity, could not be supposed to pause in a career which now seemed to be obstructed by such moderate difficulties; yet we find, on the contrary, the exertions of the Spaniards begin from this time to relax, and their acquisitions of territory to become more slow. One of the causes, undoubtedly, that produced this unexpected protraction of the contest was the superior means of resistance which the Moors found in retreating. Their population, spread originally over the whole of Spain, was now condensed, and, if I may so say, become no further compressible, in a single province. It had been mingled, in the northern and central parts, with the Mozarabic Christians, their subjects and tributaries, not perhaps treated with much injustice, yet naturally and irremediably their enemies. Toledo and Saragossa, when they fell under a Christian sovereign, were full of these inferior Christians, whose long intercourse with their masters has infused the tones and dialect of Arabia into the language of Castile.[l] But in the twelfth century the Moors, exasperated by defeat and jealous of secret disaffection, began to persecute their Christian subjects, till they renounced or

[k] If we could rely on a Moorish author quoted by Cardonne (t. i. p. 337), the city of Cordova contained, I know not exactly in what century, 200,000 houses, 600 mosques, and 900 public baths. There were 12,000 towns and villages on the banks of the Guadalquivir. This, however, must be greatly exaggerated, as numerical statements generally are. The mines of gold and silver were very productive. And the revenues of the khalifs of Cordova are said to have amounted to 130,000,000 of French money; besides large contributions that, according to the practice of oriental governments, were paid in the fruits of the earth. Other proofs of the extraordinary opulence and splendor of this monarchy are dispersed in Cardonne's work, from which they have been chiefly borrowed by later writers. The splendid engravings in Murphy's Moorish Antiquities of Spain illustrate this subject.

[l] Mariana l. xi. c. 1; Gibbon, c. 51.

fled for their religion; so that in the southern provinces scarcely any professors of Christianity were left at the time of Ferdinand's invasion. An equally severe policy was adopted on the other side. The Moors had been permitted to dwell in Saragossa as the Christians had dwelt before, subjects, not slaves; but on the capture of Seville they were entirely expelled, and new settlers invited from every part of Spain. The strong fortified towns of Andalusia, such as Gibraltar, Algeciras, Tariffa, maintained also a more formidable resistance than had been experienced in Castile; they cost tedious sieges, were sometimes recovered by the enemy, and were always liable to his attacks. But the great protection of the Spanish Mohammedans was found in the alliance and ready aid of their kindred beyond the Straits. Accustomed to hear of the African Moors only as pirates, we cannot easily conceive the powerful dynasties, the warlike chiefs, the vast armies, which for seven or eight centuries illustrate the annals of that people. Their assistance was already afforded to the true believers in Spain, though their ambition was generally dreaded by those who stood in need of their valor.[m]

Probably, however, the kings of Granada were most indebted to the indolence which gradually became characteristic of their enemies. By the cession of Murcia to Castile, the kingdom of Aragon shut itself out from the possibility of extending those conquests which had ennobled her earlier sovereigns; and their successors, not less ambitious and enterprising, diverted their attention towards objects beyond the peninsula. The Castilian, patient and undesponding in bad success, loses his energy as the pressure becomes less heavy, and puts no ordinary evil in comparison with the exertions by which it must be removed. The greater part of his country freed by his arms, he was content to leave the enemy in a single province rather than undergo the labor of making his triumph complete.

If a similar spirit of insubordination had not been found compatible in earlier ages with the aggrandizement of the Castilian monarchy, we might ascribe its want of splendid successes against the Moors to the continued rebellions which disturbed that government for more than a century after the death of Ferdinand III. [A.D. 1252.] His son, Alfonso X., might justly acquire the surname of Wise for his general pro-

[m] Cardonne, t. ii. and iii. passim.

ficiency in learning, and especially in astronomical science, if these attainments deserve praise in a king who was incapable of preserving his subjects in their duty. As a legislator, Alfonso, by his code of the Siete Partidas, sacrificed the ecclesiastical rights of his crown to the usurpation of Rome;[n] and his philosophy sunk below the level of ordinary prudence when he permitted the phantom of an imperial crown in Germany to seduce his hopes for almost twenty years. For the sake of such an illusion he would even have withdrawn himself from Castile, if the states had not remonstrated against an expedition that would probably have cost him the kingdom. In the latter years of his turbulent reign Alfonso had to contend against his son. The right of representation was hitherto unknown in Castile, which had borrowed little from the customs of feudal nations. By the received law of succession the nearer was always preferred to the more remote, the son to the grandson. Alfonso X. had established the different maxim of representation by his code of the Siete Partidas, the authority of which, however, was not universally acknowledged. The question soon came to an issue: on the death of his elder son Ferdinand, leaving two male children, Sancho their uncle asserted his claim, founded upon the ancient Castilian right of succession; and this, chiefly no doubt through fear of arms, though it did not want plausible arguments, was ratified by an assembly of the cortes, and secured, notwithstanding the king's reluctance, by the courage of Sancho. But the descendants of Ferdinand, generally called the infants of la Cerda, by the protection of France, to whose royal family they were closely allied, and of Aragon, always prompt to interfere in the disputes of a rival people, continued to assert their pretensions for more than half a century, and, though they were not very successful, did not fail to aggravate the troubles of their country.

The annals of Sancho IV. [A.D. 1284] and his two immediate successors, Ferdinand IV. [A.D. 1295] and Alfonso XI. [A.D. 1312], present a series of unhappy and dishonorable civil dissensions with too much rapidity to be remembered or even understood. Although the Castilian nobility had no pretence to the original independence of the French peers, or to the liberties of feudal tenure, they assumed the same privilege of rebelling upon any provocation from their sovereign. When

n Marina, Ensayo Historico-Critico, p. 272, etc.

such occurred, they seem to have been permitted, by legal custom, to renounce their allegiance by a solemn instrument, which exempted them from the penalties of treason.[o] A very few families composed an oligarchy, the worst and most ruinous condition of political society, alternately the favorites and ministers of the prince, or in arms against him. If unable to protect themselves in their walled towns, and by the aid of their faction, these Christian patriots retired to Aragon or Granada, and excited an hostile power against their country, and perhaps their religion. Nothing is more common in the Castilian history than instances of such defection. Mariana remarks coolly of the family of Castro, that they were much in the habit of revolting to the Moors.[p] This house and that of Lara were at one time the great rivals for power; but from the time of Alfonso X. the former seems to have declined, and the sole family that came in competition with the Laras during the tempestuous period that followed was that of Haro, which possessed the lordship of Biscay by an hereditary title. The evils of a weak government were aggravated by the unfortunate circumstances in which Ferdinand IV. and Alfonso XI. ascended the throne; both minors, with a disputed regency, and the interval too short to give ambitious spirits leisure to subside. There is indeed some apology for the conduct of the Laras and Haros in the character of their sovereigns, who had but one favorite method of avenging a dissembled injury, or anticipating a suspected treason. Sancho IV. assassinates Don Lope Haro in his palace at Valladolid. Alfonso XI. invites to court the infant Don Juan, his first-cousin, and commits a similar violence. Such crimes may be found in the history of other countries, but they were nowhere so usual as in Spain, which was far behind France, England, and even Germany, in civilization.

But whatever violence and arbitrary spirit might be imputed to Sancho and Alfonso was forgotten in the unexampled tyranny of Peter the Cruel. [A.D. 1350.] A suspicion is frequently intimated by Mariana, which seems, in more modern times, to have gained some credit, that party malevolence has at least grossly exaggerated the enormities of this prince.[q] It is diffi-

o Mariana, l. xiii. c. 11.

p Alvarus Castrius patriâ aliquanto antea, uti moris erat, renunciatâ.—Castria gens per hæc tempora ad Mauros sæpe defecisse visa est. l. xii. c. 12. See also chapters 17 and 19.

q There is in general room enough for scepticism as to the characters of men

cult, however, to believe that a number of atrocious acts unconnected with each other, and generally notorious enough in their circumstances, have been ascribed to any innocent man. The history of his reign, chiefly derived, it is admitted, from the pen of an inveterate enemy, Lope de Ayala, charges him with the murder of his wife, Blanche of Bourbon, most of his brothers and sisters, with Eleanor Gusman, their mother, many Castilian nobles, and multitudes of the commonalty; besides continual outrages of licentiousness, and especially a pretended marriage with a noble lady of the Castrian family. At length a rebellion was headed by his illegitimate brother, Henry Count of Trastamare, with the assistance of Aragon and Portugal. This, however, would probably have failed of dethroning Peter, a resolute prince, and certainly not destitute of many faithful supporters, if Henry had not invoked the more powerful succor of Bertrand du Guesclin, and the companies of adventure, who, after the pacification between France and England, had lost the occupation of war, and retained only that of plunder. With mercenaries so disciplined it was in vain for Peter to contend; but, abandoning Spain for a moment, he had recourse to a more powerful weapon from the same armory. Edward the Black Prince, then resident at Bordeaux, was induced by the promise of Biscay to enter Spain as the ally of Castile; and at the great battle of Navarette he continued lord of the ascendant over those who had so often already been foiled by his prowess. [A.D. 1367.] Du Guesclin was made prisoner; Henry fled to Aragon, and Peter remounted the throne. But a second revolution was at hand: the Black Prince, whom he had ungratefully offended, withdrew into Guienne; and he lost his kingdom and life in a second short contest with his brother.

A more fortunate period began with the accession of Henry. [A.D. 1368.] His own reign was hardly disturbed by any rebel-

who are only known to us through their enemies. History is full of calumnies, and of calumnies that can never be effaced. But I really see no ground for thinking charitably of Peter the Cruel. Froissart, part i. c. 230, and Matteo Villani (in Script. Rerum Italic. t. xiv. p. 53), the latter of whom died before the rebellion of Henry of Trastamare, speak of him much in the same terms as the Spanish historians. And why should Ayala be doubted, when he gives a long list of murders committed in the face of day, within the recollection of many persons living when he wrote? There may be a question whether Richard III. smothered his nephews in the Tower; but nobody can dispute that Henry VIII. cut off Anna Boleyn's head.

The passage from Matteo Villani above mentioned is as follows:—Cominciò aspramente a se far ubbidire, perchè temende de' suoi baroni, trovò modo di far infamare l' uno l' altro, e prendendo cagione, gli cominciò ad uccidere con le sue mani. Il in brieve tempo ne fece morire 25 e tre suoi fratelli fece morire, etc.

lion; and though his successors, John I. [A.D. 1379] and Henry III. [A.D. 1390], were not altogether so unmolested, especially the latter, who ascended the throne in his minority, yet the troubles of their time were slight in comparison with those formerly excited by the houses of Lara and Haro, both of which were now happily extinct. Though Henry II.'s illegitimacy left him no title but popular choice, his queen was sole representative of the Cerdas, the offspring, as has been mentioned above, of Sancho IV.'s elder brother, and, by the extinction of the younger branch, unquestioned heiress of the royal line. Some years afterwards, by the marriage of Henry III. with Catherine, daughter of John of Gaunt and Constance, an illegitimate child of Peter the Cruel, her pretensions, such as they were, became merged in the crown.

No kingdom could be worse prepared to meet the disorders of a minority than Castile, and in none did the circumstances so frequently recur. John II. was but fourteen months old at his accession; and but for the disinterestedness of his uncle Ferdinand, the nobility would have been inclined to avert the danger by placing that prince upon the throne. [A.D. 1406.] In this instance, however, Castile suffered less from faction during the infancy of her sovereign than in his maturity. The queen dowager, at first jointly with Ferdinand, and solely after his accession to the crown of Aragon, administered the government with credit. Fifty years had elapsed at her death in 1418 since the elevation of the house of Trastamare, who had entitled themselves to public affection by conforming themselves more strictly than their predecessors to the constitutional laws of Castile, which were never so well established as during this period. In external affairs their reigns were not what is considered as glorious. They were generally at peace with Aragon and Granada; but one memorable defeat by the Portuguese at Aljubarrota disgraces the annals of John I., whose cause was as unjust as his arms were unsuccessful. [A.D. 1385.] This comparatively golden period ceases at the majority of John II. His reign was filled up by a series of conspiracies and civil wars, headed by his cousins John and Henry, the infants of Aragon, who enjoyed very extensive territories in Castile, by the testament of their father Ferdinand. Their brother the King of Aragon frequently lent the assistance of his arms. John himself, the elder of these two princes, by marriage with the

heiress of the kingdom of Navarre, stood in a double relation to Castile, as a neighboring sovereign, and as a member of the native oligarchy. These conspiracies were all ostensibly directed against the favorite of John II., Alvaro de Luna, who retained for five-and-thirty years an absolute control over his feeble master. The adverse faction naturally ascribed to this powerful minister every criminal intention and all public mischiefs. He was certainly not more scrupulous than the generality of statesmen, and appears to have been rapacious in accumulating wealth. But there was an energy and courage about Alvaro de Luna which distinguishes him from the cowardly sycophants who usually rise by the favor of weak princes; and Castile probably would not have been happier under the administration of his enemies. His fate is among the memorable lessons of history. After a life of troubles endured for the sake of this favorite, sometimes a fugitive, sometimes a prisoner, his son heading rebellions against him, John II. suddenly yielded to an intrigue of the palace, and adopted sentiments of dislike towards the man he had so long loved. No substantial charge appears to have been brought against Alvaro de Luna, except that general malversation which it was too late for the king to object to him. The real cause of John's change of affection was, most probably, the insupportable restraint which the weak are apt to find in that spell of a commanding understanding which they dare not break; the torment of living subject to the ascendant of an inferior, which has produced so many examples of fickleness in sovereigns. That of John II. is not the least conspicuous. Alvaro de Luna was brought to a summary trial and beheaded; his estates were confiscated. He met his death with the intrepidity of Strafford, to whom he seems to have borne some resemblance in character.

John II. did not long survive his minister, dying in 1454, after a reign that may be considered as inglorious, compared with any except that of his successor. If the father was not respected, the son fell completely into contempt. He had been governed by Pacheco Marquis of Villena, as implicitly as John by Alvaro de Luna. This influence lasted for some time afterwards. But the king inclining to transfer his confidence to the Queen Joanna of Portugal, and to one Bertrand de Cueva, upon whom common fame had fixed as her paramour, a powerful confederacy of disaffected nobles was formed against the

royal authority. In what degree Henry IV.'s government had been improvident or oppressive towards the people, it is hard to determine. The chiefs of that rebellion, Carillo Archbishop of Toledo, the admiral of Castile, a veteran leader of faction, and the Marquis of Villena, so lately the king's favorite, were undoubtedly actuated only by selfish ambition and revenge. They deposed Henry in an assembly of their faction at Avila with a sort of theatrical pageantry which has often been described. [A.D. 1465.] But modern historians, struck by the appearance of judicial solemnity in this proceeding, are sometimes apt to speak of it as a national act; while, on the contrary, it seems to have been reprobated by the majority of the Castilians as an audacious outrage upon a sovereign who, with many defects, had not been guilty of any excessive tyranny. The confederates set up Alfonso, the king's brother, and a civil war of some duration ensued, in which they had the support of Aragon. The Queen of Castile had at this time borne a daughter, whom the enemies of Henry IV., and indeed no small part of his adherents, were determined to treat as spurious. Accordingly, after the death of Alfonso, his sister Isabel was considered as heiress of the kingdom. She might have aspired, with the assistance of the confederates, to its immediate possession; but, avoiding the odium of a contest with her brother, Isabel agreed to a treaty, by which the succession was absolutely settled upon her. This arrangement was not long afterwards followed by the union of that princess with Ferdinand, son of the King of Aragon. [A.D. 1469.] This marriage was by no means acceptable to a part of the Castilian oligarchy, who had preferred a connection with Portugal. And as Henry had never lost sight of the interests of one whom he considered, or pretended to consider, as his daughter, he took the first opportunity of revoking his forced disposition of the crown and restoring the direct line of succession in favor of the Princess Joanna. Upon his death, in 1474, the right was to be decided by arms. Joanna had on her side the common presumptions of law, the testamentary disposition of the late king, the support of Alfonso King of Portugal, to whom she was betrothed, and of several considerable leaders among the nobility, as the young Marquis of Villena, the family of Mendoza, and the Archbishop of Toledo, who, charging Ferdinand with ingratitude, had quitted a party which he had above all men con-

tributed to strengthen. For Isabella were the general belief of Joanna's illegitimacy, the assistance of Aragon, the adherence of a majority both among the nobles and people, and, more than all, the reputation of ability which both she and her husband had deservedly acquired. The scale was however pretty equally balanced, till the King of Portugal having been defeated at Toro in 1476, Joanna's party discovered their inability to prosecute the war by themselves, and successively made their submission to Ferdinand and Isabella.

The Castilians always considered themselves as subject to a legal and limited monarchy. For several ages the crown was elective, as in most nations of German origin, within the limits of one royal family.[r] In general, of course, the public choice fell upon the nearest heir; and it became a prevailing usage to elect a son during the lifetime of his father, till about the eleventh century a right of hereditary succession was clearly established. But the form of recognizing the heir apparent's title in an assembly of the cortes has subsisted until our own time.[s]

In the original Gothic monarchy of Spain, civil as well as ecclesiastical affairs were decided in national councils, the acts of many of which are still extant, and have been published in ecclesiastical collections. To these assemblies the dukes and other provincial governors, and in general the principal individuals of the realm, were summoned along with spiritual persons. This double aristocracy of church and state continued to form the great council of advice and consent in the first ages of the new kingdoms of Leon and Castile. The prelates and nobility, or rather some of the more distinguished nobility, appear to have concurred in all general measures of legislation, as we infer from the preamble of their statutes. It would be against analogy, as well as without evidence, to suppose that any representation of the commons had been formed in the earlier period of the monarchy. In the preamble of laws passed

r Defuncto in pace principe, primates tetius regni unà cum sacerdotibus successorum regni concilio communi constituant. Concil. Toletan. IV. c. 75, apud Marina, Teoria de las Cortes, t. ii. p. 2. This important work, by the author of the Ensayo Historico-Critico, quoted above, contains an ample digest of the parliamentary law of Castile, drawn from original and, in a great degree, unpublished records. I have been favored with the use of a copy, from which I am the more disposed to make extracts, as the book is likely, through its liberal principles, to become almost as scarce in Spain as in England. Marina's former work (the Ensayo Hist.-Crit.) furnishes a series of testimonies (c. 66) to the elective character of the monarchy from Pelayo downwards to the twelfth century.

s Teoria de las Cortes, t. ii. p. 7.

in 1020, and at several subsequent times during that and the ensuing century, we find only the bishops and magnats recited as present. According to the General Chronicle of Spain, deputies from the Castilian towns formed a part of cortes in 1169, a date not to be rejected as incompatible with their absence in 1178. However, in 1188, the first year of the reign of Alfonso IX., they are expressly mentioned; and from that era were constant and necessary parts of those general assemblies.[t] It has been seen already that the corporate towns or districts of Castile had early acquired considerable importance, arising less from commercial wealth, to which the towns of other kingdoms were indebted for their liberties, than from their utility in keeping up a military organization among the people. To this they probably owe their early reception into the cortes as integrant portions of the legislature, since we do not read that taxes were frequently demanded, till the extravagance of later kings, and their alienation of the domain, compelled them to have recourse to the national representatives.

Every chief town of a concejo or corporation ought perhaps, by the constitution of Castile, to have received its regular writ for the election of deputies to cortes.[u] But there does not appear to have been, in the best times, any uniform practice in this respect. At the cortes of Burgos, in 1315, we find one hundred and ninety-two representatives from more than ninety towns; at those of Madrid, in 1391, one hundred and twenty-six were sent from fifty towns; and the latter list contains names of several places which do not appear in the former.[v] No deputies were present from the kingdom of Leon in the cortes of Alcala in 1348, where, among many important enactments, the code of the Siete Partidas first obtained a legislative recognition.[w] We find, in short, a good deal more irregularity than during the same period in England, where the number of electing boroughs varied pretty considerably at every parliament. Yet the cortes of Castile did not cease to be a numerous body and a fair representation of the people till the reign of John II. The first princes of the house of Trastamare had acted in all

t Ensayo Hist.-Crit. p. 77; Teoria de las Cortes, t. i. p. 66. Marina seems to have somewhat changed his opinion since the publication of the former work, where he inclines to assert that the commons were from the earliest times, admitted into the legislature. In 1188, the first year of the reign of Alfonso IX., we find positive mention of la muchedumbre de las cibdades è embiados de cada cibdat.

u Teoria de las Cortes, p. 139.

v Id. p. 148. Geddes gives a list of one hundred and twenty-seven deputies from forty-eight towns to the cortes at Madrid in 1390.—Miscellaneous Tracts, vol. iii.

w Id. p. 154.

points with the advice of their cortes. But John II., and still more his son Henry IV., being conscious of their own unpopularity, did not venture to meet a full assembly of the nation. Their writs were directed only to certain towns—an abuse for which the looseness of preceding usage had given a pretence.[x] It must be owned that the people bore it in general very patiently. Many of the corporate towns, impoverished by civil warfare and other causes, were glad to save the cost of defraying their deputies' expenses. Thus, by the year 1480, only seventeen cities had retained privilege of representation. A vote was afterwards added for Granada, and three more in later times for Palencia, and the provinces of Estremadura and Galicia.[y] It might have been easy perhaps to redress this grievance while the exclusion was yet fresh and recent. But the privileged towns, with a mean and preposterous selfishness, although their zeal for liberty was at its height, could not endure the only means of effectually securing it, by a restoration of elective franchises to their fellow-citizens. The cortes of 1506 assert, with one of those bold falsifications upon which a popular body sometimes ventures, that "it is established by some laws, and by immemorial usage, that eighteen cities of these kingdoms have the right of sending deputies to cortes, and no more;" remonstrating against the attempts made by some other towns to obtain the same privilege, which they request may not be conceded. This remonstrance is repeated in 1512.[z]

From the reign of Alfonso XI., who restrained the government of corporations to an oligarchy of magistrates, the right of electing members of cortes was confined to the ruling body, the bailiffs or regidores, whose number seldom exceeded twenty-four, and whose succession was kept up by close election among themselves.[a] The people therefore had no direct share in the choice of representatives. Experience proved, as several instances in these pages will show, that even upon this

x Sepades (says John II. in 1442) que en el ayuntamiento que yo fice en la noble villa de Valladolid . . . . los procuradores de ciertas cibdades é villas de mis reynos que por mi mandado fueron llamados. This language is repeated as to subsequent meetings. p. 156.

y The cities which retained their representation in cortes were Burgos, Toledo (there was a constant dispute for precedence between these two), Leon, Granada, Cordova, Murcia, Jaen, Zamora, Toro, Soria, Valladolid, Salamanca, Segovia, Avila, Madrid, Guadalaxara, and Cuenca. The representatives of these were supposed to vote not only for their immediate constituents, but for other adjacent towns. Thus Toro voted for Palencia and the kingdom of Galicia, before they obtained separate votes; Salamanca for most of Estremadura; Guadalaxara for Siguenza and four hundred other towns. Teoria de las Cortes, pp. 160, 268.

z Idem, p. 161.

a Idem, pp. 86, 197.

narrow basis the deputies of Castile were not deficient in zeal for their country and its liberties. But it must be confessed that a small body of electors is always liable to corrupt influence and to intimidation. John II. and Henry IV. often invaded the freedom of election; the latter even named some of the deputies.[b] Several energetic remonstrances were made in cortes against this flagrant grievance. Laws were enacted and other precautions devised to secure the due return of deputies. In the sixteenth century the evil, of course, was aggravated. Charles and Philip corrupted the members by bribery.[c] Even in 1573 the cortes are bold enough to complain that creatures of government were sent thither, "who are always held for suspected by the other deputies, and cause disagreement among them." [d]

There seems to be a considerable obscurity about the constitution of the cortes, so far as relates to the two higher estates, the spiritual and temporal nobility. It is admitted that down to the latter part of the thirteenth century, and especially before the introduction of representatives from the commons, they were summoned in considerable numbers. But the writer to whom I must almost exclusively refer for the constitutional history of Castile contends that from the reign of Sancho IV. they took much less share and retained much less influence in the deliberation of cortes.[e] There is a remarkable protest of the archbishop of Toledo, in 1295, against the acts done in cortes, because neither he nor the other prelates had been admitted to their discussions nor given any consent to their resolutions, although such consent was falsely recited in the laws enacted therein.[f] This protestation is at least a testimony to the constitutional rights of the prelacy, which indeed all the early history of Castile, as well as the analogy of other governments, conspires to demonstrate. In the fourteenth and fifteenth centuries, however, they were more and more excluded.

b Teoria de las Cortes, p. 199.
c Idem, p. 213.
d p. 202.
e p. 67.
f Protestamos que desde aquí venimos non fuemos llamados á consejo, ni á los tratados soore los fechos del reyno, ni sobre las otras cosas que hí fueren tractadas et fechas, et sennaladamente sobre los fechos de los consejos de las hermandades et de las peticiones que fueron fechas de su parte, et sobre los otorgamentos que les ficieron, et sobre los previlegios que por esta nazon les fueron otorgados; mas ante fuemos ende apartados et estrannados et secados expresamente nos et los otros perlados et ricos homes et los fijosdalgo; et non fue hi cosa fecha con nuestro consejo. Otrosí protestamos por razon de aquello que dice en los previlegios que les otorgaron, que fueren los perlados llamados, et que eran otorgados de consentimiento et de voluntad dellos, que non fuemos hí presentes ni llamados nin fué fecho connuestra voluntad, nin consentiemos nui consentimos en ellos, &c. p. 72.

None of the prelates were summoned to the cortes of 1299 and 1301; none either of the prelates or nobles to those of 1370 and 1373, of 1480 and 1505. In all the latter cases, indeed, such members of both orders as happened to be present in the court attended the cortes—a fact which seems to be established by the language of the statutes.*g* Other instances of a similar kind may be adduced. Nevertheless, the more usual expression in the preamble of laws reciting those summoned to and present at the cortes, though subject to considerable variation, seems to imply that all the three estates were, at least nominally and according to legitimate forms, constituent members of the national assembly. And a chronicle mentions, under the year 1406, the nobility and clergy as deliberating separately, and with some difference of judgment, from the deputies of the commons.*h* A theory, indeed, which should exclude the great territorial aristocracy from their place in cortes, would expose the dignity and legislative rights of that body to unfavorable inferences. But it is manifest that the king exercised very freely a prerogative of calling or omitting persons of both the higher orders at his discretion. The bishops were numerous, and many of their sees not rich; while the same objections of inconvenience applied perhaps to the ricoshombres, but far more forcibly to the lower nobility, the hijosdalgo or caballe-

g Teoria de las Cortes, p. 74.

h t. ii. p. 234. Marina is influenced by a prejudice in favor of the abortive Spanish constitution of 1812, which excluded the temporal and spiritual aristocracy from a place in the legislature, to imagine a similar form of government in ancient times. But his own work furnishes abundant reasons, if I am not mistaken, to modify this opinion very essentially. A few out of many instances may be adduced from the enacting words of statutes, which we consider in England as good evidences to establish a constitutional theory. Sepades que yo hube mio acuerdo é mio consejo con mios hermanos é los arzobispos, é los obispos, é con los ricos homes de Castella, é de Leon, é con homes buenos de las villas de Castella, é de Leon, que fueron conmigo en Valladolit, sobre muchas cosas, &c. (Alfonso X. in 1258.) Mandamos enviar llama por cartas del rei é nuestras á los infantes é perlados é ricos homes é infanzones é caballeros é homes buenos de las cibdades é de las villas de los reynos de Castilia et de Toledo é de Leon é de las Estramaduras, é de Gallicia é de las Asturias é del Andalusia. (Writ of summons to cortes of Burgos in 1315.) Con acuerdo de los perlados é de los ricos homes é procuradores de las cibdades é villas é logares de los nuestros reynos. Ordinances of Toro in 1371.) Estanho hí con él el infante Don Ferrando, &c., é otros perlados é condes é ricos homes é otros caballeros é escuderos, é los procuradores de las cibdades é villas é logares de sus reynos. (Cortes of 1391.) Los tres estados que deben venir á las cortes é ayuntamientos segunt se debe facer é es de buena costumbre antigua. (Cortes of 1393.) This last passage is apparently conclusive to prove that three estates, the superior clergy, the nobility, and the commons, were essential members of the Legislature in Castile, as they were in France and England; and one is astonished to read in Marina that no faltaron á ninguna de las formalidades de derecho los monarcas que no tuvieron por oportuno llamar á cortes para semejantes actos ni al clero ni á la nobleza ni á las personas singulares de uno y otro estado. t. i. p. 69. That great citizen, Jovellanos, appears to have had much wiser notions of the ancient government of his country, as well as of the sort of reformation which she wanted: as we may infer from passages in his Memoria á sus compatriotas, Coruña, 1811, quoted by Marina for the purpose of censure.

ros. Castile never adopted the institution of deputies from this order, as in the States General of France and some other countries, much less that liberal system of landed representation, which forms one of the most admirable peculiarities in English constitution. It will be seen hereafter that spiritual and even temporal peers were summoned by English kings with much irregularity; and the disordered state of Castile through almost every reign was likely to prevent the establishment of any fixed usage in this and most other points.

The primary and most essential characteristic of a limited monarchy is that money can only be levied upon the people through the consent of their representatives. This principle was thoroughly established in Castile; and the statutes which enforce it, the remonstrances which protest against its violation, bear a lively analogy to corresponding circumstances in the history of English constitution. The lands of the nobility and clergy were, I believe, always exempted from direct taxation—an immunity which perhaps rendered the attendance of the members of those estates in the cortes less regular. The corporate districts or concejos, which, as I have observed already, differed from the communities of France and England by possessing a large extent of territory subordinate to the principal town, were bound by their charter to a stipulated annual payment, the price of their franchises, called moneda forera.[i] Beyond this sum nothing could be demanded without the consent of the cortes. Alfonso VIII., in 1177, applied for a subsidy towards carrying on the siege of Cuenca. Demands of money do not however seem to have been very usual before the prodigal reign of Alfonso X. That prince and his immediate successors were not much inclined to respect the rights of their subjects; but they encountered a steady and insuperable resistance. Ferdinand IV., in 1307, promises to raise no money beyond his legal and customary dues. A more explicit law was enacted by Alfonso XI. in 1328, who bound himself not to exact from his people, or cause them to pay any tax, either partial or general, not hitherto established by law, without the previous grant of all the deputies convened to the

[i] Marina, Ensayo Hist.-Crit. cap. 158; Teoria de las Cortes, t. ii. p. 387. This is expressed in one of their fueros, or charters: Liberi et ingenui semper maneatis, reddendo mihi et successoribus meis in unoquoque anno in die Pentecostos de unaquaque domo 12 denarios; et, mihi cum bonâ voluntate vestrâ feceritis, nullum servitium faciatis.

cortes.*j* This abolition of illegal impositions was several times confirmed by the same prince. The cortes, in 1393, having made a grant to Henry III., annexed this condition, that "since they had granted him enough for his present necessities, and even to lay up a part for a future exigency, he should swear before one of the archbishops not to take or demand any money, service, or loan, or anything else, of the cities and towns, nor of individuals belonging to them, on any pretence of necessity, until the three estates of the kingdom should first be duly summoned and assembled in cortes according to ancient usage. And if any such letters requiring money have been written, that they shall be obeyed and not complied with."*k* His son, John II., having violated this constitutional privilege on the allegation of a pressing necessity, the cortes, in 1420, presented a long remonstrance, couched in very respectful but equally firm language, wherein they assert "the good custom, founded in reason and in justice, that the cities and towns of your kingdoms shall not be compelled to pay taxes or requisitions, or other new tribute, unless your highness order it by advice and with the grant of the said cities and towns, and of their deputies for them." And they express their apprehension lest this right should be infringed, because, as they say, "there remains no other privilege or liberty which can be profitable to subjects if this be shaken."*l* The king gave them as full satisfaction as they desired that his encroachment should not be drawn into precedent. Some fresh abuses during the unfortunate reign of Henry IV. produced another declaration in equally explicit language, forming part of the sentence awarded by the arbitrators to whom the differences between the king and his people had been referred at Medina del Campo in 1465.*m* The catholic kings, as they are emi-

j De los con echar nin mandar pagar pecho desaforado ninguno, especial nin general, en toda mi tierra, sin ser llamados primeramente á cortes é otorgado por todos los procuradores que hí venieren, p. 388.

k Obedecidas é non cumplidas. This expression occurs frequently in provisions made against illegal acts of the crown; and is characteristic of the singular respect with which the Spaniards always thought it right to treat their sovereign, while they were resisting the abuses of his authority.

l La buena costumbre é possession fundada en razon é en justicia que las cibdades é villas de vuestros reinos tenian de no ser mandado coger monedas é pedidos nin otro tributo nuevo alguno en los vuestros reinos sin que la vuestra señoria lo faga é ordene de consejo é con otorgamiento de las cibdades é villas de los vuestros reinos é de sus procuradores en su nombre . . . . no queda otro previlegio ni libertad de que los subditos puedan gozar ni approvechar quebrantado el sobre dicho. t. iii. p. 30.

m Declaramos é ordenamos, que el dicho señor rei nin los otros reyes que despues del fueren non echan nin repartan nin pidan pedidos nin monedas en sus reynos, salvo por gran necessidad, é seyendo primero accordado con los perlados é grandes de sus reynos, é con los otros que á la sazon residierin en

nently called, Ferdinand and Isabella, never violated this part of the constitution; nor did even Charles I., although sometimes refused money by the cortes, attempt to exact it without their consent.[n] In the Recopilacion, or code of Castilian law published by Philip II., we read a positive declaration against arbitrary imposition of taxes, which remained unaltered on the face of the statute-book till the present age.[o] The law was indeed frequently broken by Philip II.; but the cortes, who retained throughout the sixteenth century a degree of steadiness and courage truly admirable when we consider their political weakness, did not cease to remonstrate with that suspicious tyrant, and recorded their unavailing appeal to the law of Alfonso XI., "so ancient and just, and which so long time has been used and observed." [p]

The free assent of the people by their representatives to grants of money was by no means a mere matter of form. It was connected with other essential rights indispensable to its effectual exercise; those of examining public accounts and checking the expenditure. The cortes, in the best times at least, were careful to grant no money until they were assured that what had been already levied on their constituents had been properly employed.[q] They refused a subsidy in 1390 because they had already given so much, and, "not knowing how so great a sum had been expended, it would be a great dishonor and mischief to promise any more." In 1406 they stood out a long time, and at length gave only half of what was demanded.[r] Charles I. attempted to obtain money in 1527 from the nobility as well as commons. But the former protested

su consejo, é seyendo para ello llamados los procuradores de las cibdades é villas de sus reynos, que para las tales cosas se suelen é acostumbran llamar, é seyendo per los dichos procuradores otorgado el dicho pedimento é monedas. t. ii. p. 391.

n Marina has published two letters from Charles to the city of Toledo, in 1542 and 1548, requesting them to instruct their deputies to consent to a further grant of money, which they had refused to do without leave of their constituents. t. iii. pp. 180, 187.

o t. ii. p. 393.

p En las cortes de ano de 70 y en las de 76 pedimos á v. m. fuese servide de no poner nuevos impuestos, rentas, pechos, ni derechos ni otros tributos particulares ni generales sin junta del reyno en cortes, como está dispuesto por lei del señor rei Don Alonso, y se significó á v. m. el daño grande que con las nuevas rentas habia rescibido el reino, suplicando á v. m. fuese servido de mandarle aliviar y descargar, y que en lo de adelante se les hiciesse merced de guardar las dichas leyes reales, y que ne se impusiessen nuevas rentas sin su asistencia; pues podria v. m. estar satisfecho de que el reino sirve en las cosas necessarias con toda lealtad y hasta ahora no se ha proveido lo susodicho; y el reino por la obligacion que tiene á pedir á v. m. guarde la dicha lei, y que no solamente han cessado las necessidades de los subditos y naturales de v. m. pero antes crecen de cada dia: vuelve á suplicar á v. m. sea servido concederle lo susodicho, y que las nuevas rentas pechos y derechos se quiten, y que de aquí adelante se guarde la dicha lei del señor rei Don Alonso, como tan antigua y justa y que tanto tiempo se usó y guardó. p. 395. This petition was in 1579.

q Marina, t. ii. pp. 404, 406.

r p. 409.

that "their obligation was to follow the king in war, wherefore to contribute money was totally against their privilege, and for that reason they could not acquiesce in his majesty's request." [s] The commons also refused on this occasion. In 1538, on a similar proposition, the superior and lower nobility (los grandes y caballeros) "begged with all humility that they might never hear any more of that matter." [t]

The contributions granted by cortes were assessed and collected by respectable individuals (hombres buenos) of the several towns and villages.[u] This *repartition*, as the French call it, of direct taxes is a matter of the highest importance in those countries where they are imposed by means of a gross assessment on a district. The produce was paid to the royal council. It could not be applied to any other purpose than that to which the tax had been appropriated. Thus the cortes of Segovia, in 1407, granted a subsidy for the war against Granada, on condition "that it should not be laid out on any other service except this war;" which they requested the queen and Ferdinand, both regents in John II.'s minority, to confirm by oath. Part, however, of the money remaining unexpended, Ferdinand wished to apply it to his own object of procuring the crown of Aragon; but the queen first obtained not only a release from her oath by the pope, but the consent of the cortes. They continued to insist upon this appropriation, though ineffectually, under the reign of Charles I.[v]

The cortes did not consider it beyond the line of their duty, notwithstanding the respectful manner in which they always addressed the sovereign, to remonstrate against profuse expenditure even in his own household. They told Alfonso X. in 1258, in the homely style of that age, that they thought it fitting that the king and his wife should eat at the rate of a hundred and fifty maravedis * a day, and no more; and that the king should order his attendants to eat more moderately than they did.[w] They remonstrated more forcibly against the prodigality of John II. Even in 1559 they spoke with an undaunted Castilian spirit to Philip II.:—"Sir, the expenses of your royal establishment and household are much increased; and we conceive it would much redound to the good of these

[s] Pero que contribuir á la guerra con ciertas sumas era totalmente opuesto á sus previlegios, é asi que no podrian acomodarse á lo que s. m. deseaba.—p. 411.

[t] Marina, t. ii. p. 411.

[u] Ibid., t. ii. p. 398.

* A maravedi weighed 60 grains of gold.

[v] Marina, p. 412. [w] Ibid., p. 417.

kingdoms that your majesty should direct them to be lowered, both as a relief to your wants, and that all the great men and other subjects of your majesty may take example therefrom to restrain the great disorder and excess they commit in that respect." *x*

The forms of a Castilian cortes were analogous to those of an English parliament in the fourteenth century. They were summoned by a writ almost exactly coincident in expression with that in use among us.*y* The session was opened by a speech from the chancellor or other chief officer of the court. The deputies were invited to consider certain special business, and commonly to grant money. After the principal affairs were despatched they conferred together, and, having examined the instructions of their respective constituents, drew up a schedule of petitions.*z* These were duly answered one by one; and from the petition and answer, if favorable, laws were afterwards drawn up where the matter required a new law, or promises of redress were given if the petition related to an abuse or grievance. In the struggling condition of Spanish liberty under Charles I., the crown began to neglect answering the petitions of cortes, or to use unsatisfactory generalities of expression. This gave rise to many remonstrances. The deputies insisted in 1523 on having answers before they granted money. They repeated the same contention in 1525, and obtained a general law inserted in the Recopilacion enacting that the king should answer all their petitions before he dissolved the assembly.*a* This, however, was disregarded as before; but the cortes, whose intrepid honesty under Philip II. so often attracts our admiration, continued as late as 1586 to appeal to the written statute and lament its violation.*b*

According to the ancient fundamental constitution of Castile, the king did not legislate for his subjects without their consent. The code of the Visigoths, called in Spain the Fuero Jusgo, was enacted in public councils, as were also the laws of the early kings of Leon, which appears by the reciting words of their preambles.*c* This consent was originally given only

x Senhor, los gastos de vuestro real estado y mesa son muy crescidos, y entendemos que convernia mucho al bien de estos reinos que v. m. los mandasse moderar, así para algun remedio de sus necessidades, como para que de v. m. tomen egempló totos los grandes y caballeros y otros sub litos de v. m. en la gran desorden y excessos que hacen en las cosas sobredichas. p. 437.

y Marina, t. i. p. 175; t. iii. p. 103.

z t. i. p. 278.

a p. 301.

b pp. 288-304.

c t. ii. p. 202. The acts of the cortes of Leon in 1020 run thus: Omnes pon-

by the higher estates, who might be considered, in a large sense, as representing the nation, though not chosen by it; but from the end of the twelfth century by the elected deputies of the commons in cortes. The laws of Alfonso X. in 1258, those of the same prince in 1274, and many others in subsequent times, are declared to be made with the consent (con acuerdo) of the several orders of the kingdom. More commonly, indeed, the preamble of Castilian statutes only recites their advice (consejo); but I do not know that any stress is to be laid on this circumstance. The laws of the Siete Partidas, compiled by Alfonso X., did not obtain any direct sanction till the famous cortes of Alcala, in 1348, when they were confirmed along with several others, forming altogether the basis of the statute-law of Spain.[d] Whether they were in fact received before that time has been a matter controverted among Spanish antiquaries, and upon the question of their legal validity at the time of their promulgation depends an important point in Castilian history, the disputed right of succession between Sancho IV. and the infants of la Cerda; the former claiming under the ancient customary law, the latter under the new dispositions of the Siete Partidas. If the king could not legally change the established laws without consent of his cortes, as seems most probable, the right of representative succession did not exist in favor of his grandchildren, and Sancho IV. cannot be considered as an usurper.

It appears, upon the whole, to have been a constitutional principle, that laws could neither be made nor annulled except in cortes. In 1506 this is claimed by the deputies as an established right.[e] John I. had long before admitted that what was done by cortes and general assemblies could not be undone by letters missive, but by such cortes and assemblies alone.[f] For the kings of Castile had adopted the English

tifices et abbates et optimates regni Hispaniæ jussu ipsius regis talia decreta decrevimus quæ firmiter teneantur futuris temporibus. So those of Salamanca, in 1178: Ego rex Fernandus inter cætera quæ cum episcopis et abbatibus regni nostri et quamplurimis aliis religiosis, cum comitibus terrarum et principibus et rectoribus provinciarum, toto posse tenenda statuimus apud Salamancam.

d Ensayo Hist.-Crit. p. 353; Teoria de las Cortes, t. ii. p. 77. Marina seems to have changed his opinion between the publication of these two works, in the former of which he contends for the previous authority of the Siete Partidas, and in favor of the infants of la Cerda.

e Los reyes establicieron que cuando hubiesen de hacer leyes, para que fuesen provechosas á sus reynos y cada provincias fuesen proveidas, se llamasen cortes y procuradores que entendiesen en ellas, y por esto se establecio lei que no se hiciesen ni renovasen leyes sino en cortes. Teoria de las Cortes, t. ii. p. 218.

f Lo que es fecho por cortes é por ayuntamientos que non se pueda disfacer por las tales cartas, salvo por ayuntamientos é cortes. Teoria de las Cortes, t. ii. p. 215.

practice of dispensing with statutes by a non obstante clause in their grants. But the cortes demonstrated more steadily against this abuse than the English parliament, who suffered it to remain in a certain degree till the Revolution. It was several times enacted upon their petition, especially by an explicit statute of Henry II., that grants and letters-patent dispensing with statutes should not be obeyed.[g] Nevertheless, John II., trusting to force or the servility of the judges, had the assurance to dispense explicitly with this very law.[h] The cortes of Valladolid, in 1442, obtained fresh promises and enactments against such an abuse. Philip I. and Charles I. began to legislate without asking the consent of cortes; this grew much worse under Philip II., and reached its height under his successors, who entirely abolished all constitutional privileges.[i] In 1555 we find a petition that laws made in cortes should be revoked nowhere else. The reply was such as became that age: "To this we answer, that we shall do what best suits our government." But even in 1619, and still afterwards, the patriot representatives of Castile continued to lift an unavailing voice against illegal ordinances, though in the form of very humble petition; perhaps the latest testimonies to the expiring liberties of their country.[j] The denial of exclusive legislative authority to the crown must, however, be understood to admit the legality of particular ordinances designed to strengthen the king's executive government.[k] These, no doubt, like the royal proclamations in England, extended sometimes very far, and subjected the people to a sort of arbitrary coercion much beyond what our enlightened notions of freedom would consider as reconcilable to it. But in the middle ages such temporary commands and prohibitions were not reckoned strictly legislative, and passed, perhaps rightly, for inevitable consequences of a scanty code and short sessions of the national council.

The kings were obliged to swear to the observance of laws enacted in cortes, besides their general coronation oath to keep the laws and preserve the liberties of their people. Of this we find several instances from the middle of the thirteenth century, and the practice continued till the time of

g Teoria de las Cortes, 215.
h p. 216; t. iii. p. 40.
i t. ii. p. 218.
j Ha suplicado el reino á v. m. no se promulguen nuevas leyes, ni en todo ni en parte las antiguas se alteren, sin que sea por cortes . . . . y por ser de tanta importancia vuelve el reino suplicarle humilmente á v. m. p. 220.
k p. 207.

John II., who, in 1433, on being requested to swear to the laws then enacted, answered that he intended to maintain them, and consequently no oath was necessary; an evasion in which the cortes seem unaccountably to have acquiesced.[l] The guardians of Alfonso XI. not only swore to observe all that had been agreed on at Burgos in 1315, but consented that, if any one of them did not keep his oath, the people should no longer be obliged to regard or obey him as regent.[m]

It was customary to assemble the cortes of Castile for many purposes besides those of granting money and concurring in legislation. They were summoned in every reign to acknowledge and confirm the succession of the heir apparent; and upon his accession to swear allegiance.[n] These acts were, however, little more than formal, and accordingly have been preserved for the sake of parade after all the real dignity of the cortes was annihilated. In the fourteenth and fifteenth centuries they claimed and exercised very ample powers. They assumed the right, when questions of regency occurred, to limit the prerogative, as well as to designate the persons who were to use it.[o] And the frequent minorities of Castilian kings, which were unfavorable enough to tranquillity and subordination, served to confirm these parliamentary privileges. The cortes were usually consulted upon all material business. A law of Alfonso XI. in 1328, printed in the Recopilacion or code published by Philip II., declares, "Since in the arduous affairs of our kingdom the counsel of our natural subjects is necessary, especially of the deputies from our cities and towns, therefore we ordain and command that on such great occasions the cortes shall be assembled, and counsel shall be taken of the three estates of our kingdoms, as the kings our forefathers have been used to do."[p] A cortes of John II., in 1419, claimed this right of being consulted in all matters of importance, with a warm remonstrance against the alleged violation of so wholesome a law by the reigning prince; who answered, that in weighty matters he had acted, and would continue to act, in conformity to it.[q] What should be intended by great and weighty affairs might be not at all agreed upon by the two parties; to each of whose interpretations these words gave pretty full scope. However, the current usage of the monarchy

l Teoria de las Cortes, t. i. p. 306.
m t. iii. p. 62.
n t. i. p. 33; t. ii. p. 24.
o p. 230.
p t. i. p. 31.
q p. 34.

certainly permitted much authority in public deliberations to the cortes. Among other instances, which indeed will continually be found in the common civil histories, the cortes of Ocana, in 1469, remonstrate with Henry IV. for allying himself with England rather than France, and give, as the first reason of complaint, that, "according to the laws of your kingdom, when the kings have anything of great importance in hand, they ought not to undertake it without advice and knowledge of the chief towns and cities of your kingdom." [r] This privilege of general interference was asserted, like other ancient rights, under Charles, whom they strongly urged, in 1548, not to permit his son Philip to depart out of the realm.[s] It is hardly necessary to observe that, in such times, they had little chance of being regarded.

The kings of Leon and Castile acted, during the interval of the cortes, by the advice of a smaller council, answering, as it seems, almost exactly to the king's ordinary council in England. In early ages, before the introduction of the commons, it is sometimes difficult to distinguish this body from the general council of the nation; being composed, in fact, of the same class of persons, though in smaller numbers. A similar difficulty applies to the English history. The nature of their proceedings seems best to ascertain the distinction. All executive acts, including those ordinances which may appear rather of a legislative nature, all grants and charters, are declared to be with the assent of the court (curia), or of the magnats of the palace, or of the chiefs or nobles.[t] This privy council was an essential part of all European monarchies; and, though the sovereign might be considered as free to call in the advice of whomsoever he pleased, yet, in fact, the princes of the blood and most powerful nobility had anciently a constitutional right to be members of such a council, so that it formed a very material check upon his personal authority.

The council underwent several changes in progress of time, which it is not necessary to enumerate. It was justly deemed an important member of the constitution, and the cortes showed a laudable anxiety to procure its composition in such

r Porque, segunt leyes de nuestros reynos, cuando los reyes han de facer alguna cosa de gran importancia, non lo leben facer sin consejo é sabiduria de las cibdades é villas principales de vuestros reynos. Teoria de las Cortes, t. ii. p. 241.

s t. iii. p. 183.

t Cum assensu magnatum palatii: Cum consilio curiæ meæ: Cum consilio et beneplacito omnium principum meorum, nulle contradicente nec reclamente. Teoria de las Cortes, t. iii. p. 325.

a manner as to form a guarantee for the due execution of laws after their own dissolution. Several times, especially in minorities, they even named its members or a part of them, and in the reigns of Henry III. and John II. they obtained the privilege of adding a permanent deputation, consisting of four persons elected out of their own body, annexed as it were to the council, who were to continue at the court during the interval of cortes and watch over the due observance of the laws.[u] This deputation continued as an empty formality in the sixteenth century. In the council the king was bound to sit personally three days in the week. Their business, which included the whole executive government, was distributed with considerable accuracy into what might be despatched by the council alone, under their own seals and signatures, and what required the royal seal.[v] The consent of this body was necessary for almost every act of the crown: for pensions or grants of money, ecclesiastical and political promotions, and for charters of pardon, the easy concession of which was a great encouragement to the homicides so usual in those ages, and was restrained by some of our own laws.[w] But the council did not exercise any judicial authority, if we may believe the well-informed author from whom I have learned these particulars; unlike in this to the ordinary council of the kings of England. It was not until the days of Ferdinand and Isabella that this, among other innovations, was introduced.[x]

Civil and criminal justice was administered, in the first instance, by the alcaldes, or municipal judges of towns; elected within themselves, originally, by the community at large, but, in subsequent times, by the governing body. In other places a lord possessed the right of jurisdiction by grant from the crown, not, what we find in countries where the feudal system was more thoroughly established, as incident to his own territorial superiority. The kings, however, began in the thirteenth century to appoint judges of their own, called corregidores, a name which seems to express concurrent jurisdiction with the regidores, or ordinary magistrates.[y] The cortes frequently remonstrated against this encroachment. Alfonso XI. consented to withdraw his judges from all corporations by which

u Teoria de las Cortes, t. ii. p. 346.
v p. 354.
w pp. 360, 362, 372.
x t. ii. pp. 375, 379.

y Alfonso X. says, Ningun ome sea osado juzgar pleytos, se no fuere alcalde puesto pol el rey. Id. fol. 27. This seems an encroachment on the municipal magistrates.

he had not been requested to appoint them.[z] Some attempts to interfere with the municipal authorities of Toledo produced serious disturbances under Henry III. and John II.[a] Even where the king appointed magistrates at a city's request, he was bound to select them from among the citizens.[b] From this immediate jurisdiction an appeal lay to the adelantado or governor of the province, and from thence to the tribunal of royal alcaldes.[c] The latter, however, could not take cognizance of any cause depending before the ordinary judges; a contrast to the practice of Aragon, where the justiciary's right of evocation (juris firma) was considered as a principal safeguard of public liberty.[d] As a court of appeal, the royal alcaldes had the supreme jurisdiction. The king could only cause their sentence to be revised, but neither alter nor revoke it.[e] They have continued to the present day as a criminal tribunal; but civil appeals were transferred by the ordinances of Toro in 1371 to a new court, styled the king's audience, which, though deprived under Ferdinand and his successors of part of its jurisdictions, still remains one of the principal judicatures in Castile.[f]

No people in a half-civilized state of society have a full practical security against particular acts of arbitrary power. They were more common perhaps in Castile than in any other European monarchy which professed to be free. Laws indeed were not wanting to protect men's lives and liberties, as well as their properties. Ferdinand IV., in 1299, agreed to a petition that "justice shall be executed impartially according to law and right; and that no one shall be put to death or imprisoned, or deprived of his possessions, without trial, and that this be better observed than heretofore."[g] He renewed the same law in 1307. Nevertheless, the most remarkable circumstance of this monarch's history was a violation of so sacred and apparently so well established a law. Two gentlemen having been accused of murder, Ferdinand, without waiting for any process, ordered them to instant execution. They summoned

z Teoria de las Cortes, t. ii. p. 251.
a p. 255. Mariana, l. xx. c. 13.
b p. 255.
c p. 266.
d p. 260.
e pp. 287, 304.
f Teoria de las Cortes, t. ii. pp. 292-302. The use of the present tense in this and many other passages will not confuse the attentive reader.

g Que mandase facer la justicia en aquellos que la merecen comunalmente con fuero é con derecho é los homes que non sean muertos nin presos nin tomados lo que han sin ser oidos por derecho ó por fuero de aquel logar do acaesciere, é que sea guardado mejor que se guardo fasta aqui. Marina, Ensayo Hist.-Critico, p. 148.

him with their last words to appear before the tribunal of God in thirty days; and his death within the time, which has given him the surname of the Summoned, might, we may hope, deter succeeding sovereigns from iniquity so flagrant. But from the practice of causing their enemies to be assassinated, neither law nor conscience could withhold them. Alfonso XI. was more than once guilty of this crime. Yet he too passed an ordinance in 1325 that no warrant should issue for putting any one to death, or seizing his property, till he should be duly tried by course of law. Henry II. repeats the same law in very explicit language.*h* But the civil history of Spain displays several violations of it. An extraordinary prerogative of committing murder appears to have been admitted in early times by several nations who did not acknowledge unlimited power in their sovereign.*i* Before any regular police was established, a powerful criminal might have been secure from all punishment but for a notion, as barbarous as any which it served to counteract, that he could be lawfully killed by the personal mandate of the king. And the frequent attendance of sovereigns in their courts of judicature might lead men not accustomed to consider the indispensable necessity of legal forms to confound an act of assassination with the execution of justice.

Though it is very improbable that the nobility were not considered as essential members of the cortes, they certainly attended in smaller numbers than we should expect to find from the great legislative and deliberative authority of that assembly. This arose chiefly from the lawless spirit of that martial aristocracy which placed less confidence in the constitutional methods of resisting arbitrary encroachment than in its own armed combinations.*j* Such confederacies to obtain redress of grievances by force, of which there were five or six remarkable instances, were called Hermandad (brotherhood or union), and, though not so explicitly sanctioned as they were by the celebrated Privilege of Union in Aragon, found countenance in a law of Alfonso X., which cannot be deemed so much to

h Que non mandemos matar nin prender nin lisiar nin despechar nin tomar á alguno ninguna cosa de lo suyo, sin ser anté llamado é oido é vencido por fuero é por derecho, por querella nin por querellas que á nos fuesen dadas, segunt que esto está ordenado por el rei don Alonso nuestro padre. Teoria de las Cortes, t. ii. p. 287.

i Si quis hominem per jussionem regis vel ducis sui occiderit, non requiratur ei, nec sit faidosus, quia jussio domini sui fuit, et non potuit contradicere jussionem. Leges Bajuvariorum, tit. ii. in Baluz Capitularibus.

j Teoria de las Cortes, t. ii. p. 465.

have voluntarily emanated from that prince as to be a record of original rights possessed by the Castilian nobility. "The duty of subjects towards their king," he says, "enjoins them not to permit him knowingly to endanger his salvation, nor to incur dishonor and inconvenience in his person or family, nor to produce mischief to his kingdom. And this may be fulfilled in two ways: one by good advice, showing him the reason wherefore he ought not to act thus; the other by deeds, seeking means to prevent his going on to his own ruin, and putting a stop to those who give him ill counsel, forasmuch as his errors are of worse consequence than those of other men; it is the bounden duty of subjects to prevent his committing them." *k* To this law the insurgents appealed in their coalition against Alvaro de Luna; and indeed we must confess that, however just and admirable the principles which it breathes, so general a license of rebellion was not likely to preserve the tranquillity of a kingdom. The deputies of towns in a cortes of 1445 petitioned the king to declare that no construction should be put on this law inconsistent with the obedience of subjects towards their sovereign; a request to which of course he willingly acceded.

Castile, it will be apparent, bore a closer analogy to England in its form of civil polity than France or even Aragon. But the frequent disorders of its government and a barbarous state of manners rendered violations of law much more continual and flagrant than they were in England under the Plantaganet dynasty. And besides these practical mischiefs, there were two essential defects in the constitution of Castile, through which perhaps it was ultimately subverted. It wanted those two brilliants in the coronet of British liberty, the representation of freeholders among the commons, and trial by jury. The cortes of Castile became a congress of deputies from a few cities, public-spirited indeed and intrepid, as we find them in bad times, to an eminent degree, but too much limited in number, and too unconnected with the territorial aristocracy, to maintain a just balance against the crown. Yet, with every disadvantage, that country possessed a liberal form of government, and was animated with a noble spirit for its defence. Spain, in her late memorable though short resuscitation, might well have gone back to her ancient institutions, and perfected

k Ensayo Hist.-Critico, p. 312.

a scheme of policy which the great example of England would have shown to be well adapted to the security of freedom. What she did, or rather attempted, instead, I need not recall. May her next effort be more wisely planned, and more happily terminated! *l*

Though the kingdom of Aragon was very inferior in extent to that of Castile, yet the advantages of a better form of government and wiser sovereigns, with those of industry and commerce along a line of seacoast, rendered it almost equal in importance. Castile rarely intermeddled in the civil dissensions of Aragon; the kings of Aragon frequently carried their arms into the heart of Castile. During the sanguinary outrages of Peter the Cruel, and the stormy revolutions which ended in establishing the house of Trastamare, Aragon was not indeed at peace, nor altogether well governed; but her political consequence rose in the eyes of Europe through the long reign of the ambitious and wily Peter IV., whose sagacity and good fortune redeemed, according to the common notions of mankind, the iniquity with which he stripped his relation the King of Majorca of the Balearic islands, and the constant perfidiousness of his character. I have mentioned in another place the Sicilian war, prosecuted with so much eagerness for many years by Peter III. and his son Alfonso III. After this object was relinquished James II. undertook an enterprise less splendid, but not much less difficult: the conquest of Sardinia. That island, long accustomed to independence, cost an incredible expense of blood and treasure to the kings of Aragon during the whole fourteenth century. It was not fully subdued till the commencement of the next, under the reign of Martin.

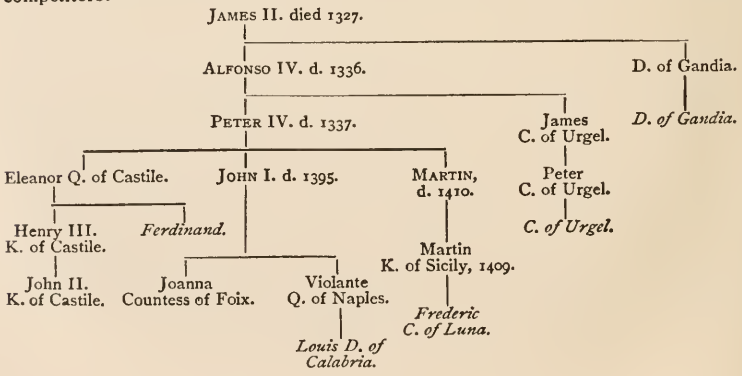
At the death of Martin King of Aragon, in 1410, a memorable question arose as to the right of succession. Though Petronilla, daughter of Ramiro II., had reigned in her own right from 1137 to 1172, an opinion seems to have gained ground from the thirteenth century that females could not inherit the crown of Aragon. Peter IV. had incited a civil war by attempting to settle the succession upon his daughter, to the exclusion of his next brother. The birth of a son about the same time suspended the ultimate decision of this question; but it was tacitly understood that what is called the Salic law

l The first edition of this work was published in 1818.

ought to prevail.[m] Accordingly, on the death of John I. in 1395, his two daughters were set aside in favor of his brother Martin, though not without opposition on the part of the elder, whose husband, the Count of Foix, invaded the kingdom, and desisted from his pretension only through want of force. Martin's son, the King of Sicily, dying in his father's lifetime, the nation was anxious that the king should fix upon his successor, and would probably have acquiesced in his choice. But his dissolution occurring more rapidly than was expected, the throne remained absolutely vacant. The Count of Urgel had obtained a grant of the lieutenancy, which was the right of the heir apparent. This nobleman possessed an extensive territory in Catalonia, bordering on the Pyrenees. He was grandson of James, next brother to Peter IV., and, according to the rules of inheritance, certainly stood in the first place. The other claimants were the Duke of Gandia, grandson of James II., who, though descended from a more distant ancestor, set up a claim founded on proximity to the royal stock, which in some countries was preferred to a representative title; the Duke of Calabria, son of Violante, younger daughter of John I. (the Countess of Foix being childless); Frederic Count of Luna, a natural son of the younger Martin King of Sicily, legitimated by the pope, but with a reservation excluding him from royal succession; and finally, Ferdinand, infant of Castile, son of the late king's sister.[n] The Count of

[m] Zurita, t. ii. f. 188. It was pretended that women were excluded from the crown in England as well as France: and this analogy seems to have had some influence in determining the Aragonese to adopt a Salic law.

[n] The subjoined pedigree will show more clearly the respective titles of the competitors:—



Urgel was favored in general by the Catalans, and he seemed to have a powerful support in Antonio de Luna, a baron of Aragon, so rich that he might go through his own estate from France to Castile. But this apparent superiority frustrated his hopes. The justiciary and other leading Aragonese were determined not to suffer this great constitutional question to be decided by an appeal to force, which might sweep away their liberties in the struggle. Urgel, confident of his right, and surrounded by men of ruined fortunes, was unwilling to submit his pretensions to a civil tribunal. His adherent, Antonio de Luna, committed an extraordinary outrage, the assassination of the Archbishop of Saragossa, which alienated the minds of good citizens from his cause. On the other hand, neither the Duke of Gandia, who was very old,[o] nor the Count of Luna, seemed fit to succeed. The party of Ferdinand, therefore, gained ground by degrees. It was determined however, to render a legal sentence. The cortes of each nation agreed upon the nomination of nine persons, three Aragonese, three Catalans, and three Valencians, who were to discuss the pretensions of the several competitors, and by a plurality of six votes to adjudge the crown. Nothing could be more solemn, more peaceful, nor, in appearance, more equitable than the proceedings of this tribunal. They summoned the claimants before them, and heard them by counsel. One of these, Frederic of Luna, being ill-defended, the court took charge of his interests, and named other advocates to maintain them. A month was passed in hearing arguments; a second was alloted to considering them; and at the expiration of the prescribed time it was announced to the people, by the mouth of St. Vincent Ferrier, that Ferdinand of Castile had ascended the throne.[p] [A.D. 1412.]

o This Duke of Gandia died during the interregnum. His son, though not so objectionable on the score of age, seemed to have a worse claim; yet he became a competitor.

p Biancæ Commentaria, in Schotti Hispania Illustrata, t. ii. Zurita, t. iii. f. 1-74. Vincent Ferrier was the most distinguished churchman of his time in Spain. His influence, as one of the nine judges, is said to have been very instrumental in procuring the crown for Ferdinand. Five others voted the same way; one for the Count of Urgel; one doubtfully between the Count of Urgel and Duke of Gandia; the ninth declined to vote. Zurita, t. iii. f. 71. It is curious enough that John King of Castile was altogether disregarded; though his claim was at least as plausible as that of his uncle Ferdinand. Indeed, upon the principle of inheritance to which we are accustomed, Louis Duke of Calabria had a prior right to Ferdinand, admitting the rule which it was necessary for both of them to establish; namely, that a right of succession might be transmitted through females which females could not personally enjoy. This, as is well known, had been advanced in the preceding age by Edward III. as the foundation of his claim to the throne of France.

In this decision it is impossible not to suspect that the judges were swayed rather by politic considerations than a strict sense of hereditary right. It was, therefore, by no means universally popular, especially in Catalonia, of which principality the Count of Urgel was a native; and perhaps the great rebellion of the Catalans fifty years afterwards may be traced to the disaffection which this breach, as they thought, of the lawful succession had excited. Ferdinand, however, was well received in Aragon. The cortes generously recommended the Count of Urgel to his favor, on account of the great expenses he had incurred in prosecuting his claim. But Urgel did not wait the effect of this recommendation. Unwisely attempting a rebellion with very inadequate means, he lost his estates, and was thrown for life into prison. Ferdinand's successor was his son, Alfonso V., more distinguished in the history of Italy than of Spain. [A.D. 1416.] For all the latter years of his life he never quitted the kingdom that he had acquired by his arms; and, enchanted by the delicious air of Naples, intrusted the government of his patrimonial territories to the care of a brother and an heir. John II. [A.D. 1458], upon whom they devolved by the death of Alfonso without legitimate progeny, had been engaged during his youth in the turbulent revolutions of Castile, as the head of a strong party that opposed the domination of Alvaro de Luna. By marriage with the heiress of Navarre he was entitled, according to the usage of those times, to assume the title of king, and administration of government, during her life. But his ambitious retention of power still longer produced events which are the chief stain on his memory. Charles Prince of Viana was, by the constitution of Navarre, entitled to succeed his mother. [A.D. 1420.] She had requested him in her testament not to assume the government without his father's consent. That consent was always withheld. The prince raised what we ought not to call a rebellion; but was made prisoner, and remained for some time in captivity. [A.D. 1442.] John's ill disposition towards his son was exasperated by a step-mother, who scarcely disguised her intention of placing her own child on the throne of Aragon at the expense of the eldest born. After a life of perpetual oppression, chiefly passed in exile or captivity, the Prince of Viana died in Catalonia, at a moment when that province was in open insurrection upon his account.

[A.D. 1461.] Though it hardly seems that the Catalans had any more general provocations, they persevered for more than ten years with inveterate obstinacy in their rebellion, offering the sovereignty first to a prince of Portugal, and afterwards to Regnier Duke of Anjou, who was destined to pass his life in unsuccessful competition for kingdoms. The King of Aragon behaved with great clemency towards these insurgents on their final submission.

It is consonant to the principle of this work to pass lightly over the common details of history, in order to fix the reader's attention more fully on subjects of philosophical inquiry. Perhaps in no European monarchy except England was the form of government more interesting than in Aragon, as a fortunate temperament of law and justice with the royal authority. So far as anything can be pronounced of its earlier period before the capture of Saragossa in 1118, it was a kind of regal aristocracy, where a small number of powerful barons elected their sovereign on every vacancy, though, as usual in other countries, out of one family; and considered him as little more than the chief of their confederacy.[q] These were the ricoshombres or barons, the first order of the State. Among these the kings of Aragon, in subsequent times, as they extended their dominions, shared the conquered territory in grants of honors on a feudal tenure.[r] For this system was fully established in the kingdom of Aragon. A ricohombre, as we read in Vitalis Bishop of Huesca, about the middle of the thirteenth century,[s] must hold of the king an honor or barony capable of supporting more than three knights; and this he was bound to distribute among his vassals in military fiefs. Once in the year he might be summoned with his feudatories to serve the sovereign for two months (Zurita says three); and he was to attend the royal court, or general assembly,

q Alfonso III. complained that his barons wanted to bring back old times, quando havia en el reyno tantos reyes como ricos hombres. Biancæ Commentaria, p. 787. The form of election supposed to have been used by these bold barons is well known. "We, who are as good as you, choose you for our king and lord, provided that you observe our laws and privileges; and if not, not." But I do not much believe the authenticity of this form of words. See Robertson's Charles V. vol. i. note 31. It is, however, sufficiently agreeable to the spirit of the old government.

r Los ricos hombres, por los feudos que tenian del rey, eran obligados de seguir al rey, si yva en persona á la guerra, y residir en ella tres meses en cadaun ano. Zurita, t. i. fol. 43. (Saragossa, 1610.) A fief was usually called in Aragon an honor, que en Castilla llamavan tierra, y en el principado de Cataluna feudo. fol. 46.

s I do not know whether this work of Vitalis has been printed; but there are large extracts from it in Blancas's history, and also in Du Cange, under the words Infancia, Mesnadarius, &c. Several illustrations of these military tenures may be found in the Fueros de Aragon, especially lib. 7.

as a counsellor, whenever called upon, assisting in its judicial as well as deliberative business. In the towns and villages of his barony he might appoint bailiffs to administer justice and receive penalties; but the higher criminal jurisdiction seems to have been reserved to the crown. According to Vitalis, the king could divest these ricoshombres of their honors at pleasure, after which they fell into the class of mesnadaries, or mere tenants in chief. But if this were constitutional in the reign of James I., which Blancas denies, it was not long permitted by that high-spirited aristocracy. By the General Privilege or Charter of Peter III. it is declared that no barony can be taken away without a just cause and legal sentence of the justiciary and council of barons.[t] And the same protection was extended to the vassals of the ricoshombres.

Below these superior nobles were the mesnadaries, corresponding to our mere tenants in chief, holding estates not baronial immediately from the crown; and the military vassals of the high nobility, the knights and *infanzones;* a word which may be rendered by gentleman. These had considerable privileges in that aristocratic government; they were exempted from all taxes, they could only be tried by the royal judges for any crime; and offences committed against them were punished with additional severity.[u] The ignoble classes were, as in other countries, the burgesses of towns, and the villeins or peasantry. The peasantry seem to have been subject to territorial servitude, as in France and England. Vitalis says that some villeins were originally so unprotected that, as he expresses it, they might be divided into pieces by sword among the sons of their masters, till they were provoked to an insurrection, which ended in establishing certain stipulations, whence they obtained the denomination of villeins *de parada,* or of convention.[v]

Though from the twelfth century the principle of hereditary succession to the throne superseded, in Aragon as well as Castile, the original right of choosing a sovereign within the royal family, it was still founded upon one more sacred and fundamental, that of compact, No King of Aragon was entitled to assume that name until he had taken a coronation oath, administered by the justiciary of Saragossa, to observe the laws

[t] Biancæ Comm. p. 730.
[u] Ibid., 732.
[v] Ibid., p. 729.

and liberties of the realm.*w* Alfonso III., in 1285, being in France at the time of his father's death, named himself king in addressing the States, who immediately remonstrated on this premature assumption of his title, and obtained an apology.*x* Thus, too, Martin, having been called to the crown of Aragon by the cortes in 1395, was especially required not to exercise any authority before his coronation.*y*

Blancas quotes a noble passage from the acts of cortes in 1451. "We have always heard of old time, and it is found by experience, that, seeing the great barrenness of this land, and the poverty of the realm, if it were not for the liberties thereof, the folk would go hence to live and abide in other realms and lands more fruitful."*z* This high spirit of freedom had long animated the Aragonese. After several contests with the crown in the reign of James I., not to go back to earlier times, they compelled Peter III. in 1283 to grant a law, called the General Privilege, the Magna Charta of Aragon, and perhaps a more full and satisfactory basis of civil liberty than our own. It contains a series of provisions against arbitrary tallages, spoliations of property, secret process after the manner of the Inquisition in criminal charges, sentences of the justiciary without assent of the cortes, appointment of foreigners or Jews to judicial offices, trials of accused persons in places beyond the kingdom, the use of torture, except in charges of falsifying coin, and the bribery of judges. These are claimed as the ancient liberties of their country. "Absolute power (mero imperio è mixto)," it is declared, "never was the constitution of Aragon, nor of Valencia, nor yet of Ribagorça, nor shall there be in time to come any innovation made; but only the law, custom, and privilege which has been anciently used in the aforesaid kingdoms."*a*

w Zurita, Anales de Aragon, t. i. fol. 104, t. iii. fol. 76.

x Biancæ Comm. p. 661. They acknowledged, at the same time, that he was their natural lord, and entitled to reign as lawful heir to his father—so oddly were the herditary and elective titles jumbled together. Zurita, t. i. fol. 303.

y Zurita, t. ii. fol. 424.

z Siempre havemos oydo dezir antigament, é se troba por esperiencia, que attendida la grand sterilidad de aquesta tierra, é pobreza de aqueste regno, si non fues por las libertades de aquel, se yrian á bivir, y habitar las gentes á otros regnos, é tierras mas frutieras. p. 571. Aragon was, in fact, a poor country, barren and ill-peopled. The kings were forced to go to Catalonia for money, and indeed were little able to maintain expensive contests. The wars of Peter IV. in Sardinia, and of Alfonso V. with Genoa and Naples, impoverished their people. A hearth-tax having been imposed in 1404, it was found that there were 42,683 houses in Aragon, which, according to most calculations, will give less than 300,000 inhabitants. In 1429, a similar tax being laid on, it is said that the number of houses was diminished in consequence of war. Zurita, t. iii. fol. 189. It contains at present [1818] between 600,000 and 700,000 inhabitants.

a Fueros de Aragon, fol. 9; Zurita, t. i. fol. 265.

The concessions extorted by our ancestors from John, Henry III., and Edward I. were secured by the only guarantee those times could afford, the determination of the barons to enforce them by armed confederacies. These, however, were formed according to emergencies, and, except in the famous commission of twenty-five conservators of Magna Charta, in the last year of John, were certainly unwarranted by law. But the Aragonese established a positive right of maintaining their liberties by arms. This was contained in the Privilege of Union granted by Alfonso III. in 1287, after a violent conflict with his subjects; but which was afterwards so completely abolished, and even eradicated from the records of the kingdom, that its precise words have never been recovered.*b* According to Zurita, it consisted of two articles: first, that in the case of the king's proceeding forcibly against any member of the union without previous sentence of the justiciary, the rest should be absolved from their allegiance; secondly, that he should hold cortes every year in Saragossa.*c* During the two subsequent reigns of James II. and Alfonso IV. little pretence seems to have been given for the exercise of this right. But dissensions breaking out under Peter IV. in 1347, rather on account of his attempt to settle the crown upon his daughter than of any specific public grievances, the nobles had recourse to the Union, that last voice, says Blancas, of an almost expiring state, full of weight and dignity, to chastise the presumption of kings.*d* They assembled at Saragossa, and used a remarkable seal for all their public instruments, an engraving from which may be seen in the historian I have just quoted. It represents the king sitting on his throne, with the confederates kneeling in a suppliant attitude around, to denote their loyalty and unwillingness to offend. But in the background tents and lines of spears are discovered, as a hint of their ability and resolution to defend themselves. The legend is Sigillum Unionis Aragonum. This respectful demeanor towards a sovereign against whom they were waging war re-

b Blancas says that he had discovered a copy of the Privilege of Union in the archives of the see of Tarragona, and would gladly have published it, but for his deference to the wisdom of former ages, which had studiously endeavored to destroy all recollection of that dangerous law. p. 662.

c Zurita, t. i. fol. 322.

d Priscam illam Unionis, quasi morientis reipublicæ extremam vocem, auctoritatis et gravitatis plenam, regum insolentiæ apertum vindicem excitârunt, summâ ac singulari bonorum omnium consensione. p. 669. It is remarkable that such strong language should have been tolerated under Philip II.

minds us of the language held out by The Long Parliament before the Presbyterian party was overthrown. And although it has been highly censured as inconsistent and hypocritical, this tone is the safest that men can adopt, who, deeming themselves under the necessity of withstanding the reigning monarch, are anxious to avoid a change of dynasty, or subversion of their constitution. These confederates were defeated by the king at Epila in 1348.[e] But his prudence and the remaining strength of his opponents inducing him to pursue a moderate course, there ensued a more legitimate and permanent balance of the constitution from this victory of the royalists. The Privilege of Union was abrogated, Peter himself cutting to pieces with his sword the original instrument. But in return many excellent laws for the security of the subject were enacted;[f] and their preservation was intrusted to the greatest officer of the kingdom, the justiciary, whose authority and pre-eminence may in a great degree be dated from this period.[g] That watchfulness over public liberty, which originally belonged to the aristocracy of ricoshombres, always apt to thwart the crown or to oppress the people, and which was afterwards maintained by the dangerous Privilege of Union, became the duty of a civil magistrate, accustomed to legal rules and responsible for his actions, whose office and functions are the most pleasing feature in the constitutional history of Aragon.

The justiza or justiciary of Aragon has been treated by some writers as a sort of anomalous magistrate, created originally as an intermediate power between the king and people, to watch over the exercise of royal authority. But I do not perceive that his functions were, in any essential respect, different from those of the chief justice of England, divided, from the time of Edward I., among the judges of the King's Bench. We should undervalue our own constitution by supposing that there did not reside in that court as perfect an authority to redress the subject's injuries as was possessed by the Ara-

e Zurita observes that the battle of Epila was the last fought in defence of public liberty, for which it was held lawful of old to take up arms, and resist the king, by virtue of the Privileges of Union. For the authority of the justiciary being afterwards established, the former contentions and wars came to an end; means being found to put the weak on a level with the powerful, in which consists the peace and tranquillity of all states; and from thence the name of Union was, by common consent, proscribed. t. ii. fol. 226. Blancas also remarks that nothing could have turned out more advantageous to the Aragonese than their ill fortune at Epila.

f Fueros de Aragon. De iis, quæ Dominus rex. fol. 14, et alibi passim.

g Bianc. Comm. pp. 671, 811; Zurita, t. ii. fol. 229.

gonese magistrate. In the practical exercise, indeed, of this power, there was an abundant difference. Our English judges, more timid and pliant, left to the remonstrances of parliament that redress of grievances which very frequently lay within the sphere of their jurisdiction. There is, I believe, no recorded instance of a habeas corpus granted in any case of illegal imprisonment by the crown or its officers during the continuance of the Plantagenet dynasty. We shall speedily take notice of a very different conduct in Aragon.

The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saragossa in 1118, when the series of magistrates commences.*h* But for a great length of time they do not appear to have been particularly important; the judicial authority residing in the council of ricoshombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own. A passage in Vitalis Bishop of Huesca, whom I have already mentioned, shows this to have been the practice during the reign of James I.*i* Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger, and there was fortunately a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence. Soon after the accession of James II., on some dissensions arising between the king and his barons, he called in the justiciary as a mediator whose sentence, says Blancas, all obeyed.*j* At a subsequent time in the same reign the military orders, pretending that some of their privileges were violated, raised a confederacy or union against the king. James offered to refer the dispute to the justiciary, Ximenes Salanova, a man of eminent legal knowledge. The knights resisted his jurisdiction, alleging the question to be of spiritual cognizance. He decided it, however, against them in full cortes at Saragossa, annulled their league, and sentenced the leaders to punishment.*k* It was adjudged also that no appeal could lie to the

h Biancæ Comment. p. 638.

i Id. p. 772. Zurita indeed refers the justiciary's pre-eminence to an earlier date, namely, the reign of Peter II., who took away a great part of the local jurisdictions of ricoshombres. t. i. fol. 102. But if I do not misunderstand the meaning of Vitalis, his testimony seems to be beyond dispute. By the General Privilege of 1283, the justiciary was to advise with the ricoshombres, in all cases where the king was a party against any of his subjects. Zurita, f. 281. See also f. 180.

j Zurita, p. 663.

k Ibid., t. i. f. 403; t. ii. f. 34; Bian. p. 666. The assent of the cortes seems to render this in the nature of a legislative, rather than a judicial proceeding; but it is difficult to pronounce

spiritual court from a sentence of the justiciary passed with assent of the cortes. James II. is said to have frequently sued his subjects in the justiciary's court, to show his regard for legal measures; and during the reign of this good prince its authority became more established.[l] Yet it was not perhaps looked upon as fully equal to maintain public liberty against the crown, till in the cortes of 1348, after the Privilege of the Union was forever abolished, such laws were enacted, and such authority given to the justiciary, as proved eventually a more adequate barrier against oppression than any other country could boast. All the royal as well as territorial judges were bound to apply for his opinion in case of legal difficulties arising in their courts, which he was to certify within eight days. By subsequent statutes of the same reign it was made penal for any one to obtain letters from the king, impeding the execution of the justiza's process, and they were declared null. Inferior courts were forbidden to proceed in any business after his prohibition.[m] Many other laws might be cited, corroborating the authority of this great magistrate; but there are two parts of his remedial jurisdiction which deserve special notice.

These are the processes of jurisfirma, or firma del derecho, and of manifestation. The former bears some analogy to the writs of *pone* and *certiorari* in England, through which the Court of King's Bench exercises its right of withdrawing a suit from the jurisdiction of inferior tribunals. But the Aragonese jurisfirma was of more extensive operation. Its object was not only to bring a cause commenced in an inferior court before the justiciary, but to prevent or inhibit any process from issuing against the person who applied for its benefit, or any molestation from being offered to him; so that, as Blancas expresses it, when we have entered into a recognizance (firmè et graviter asseveremus) before the justiciary of Aragon to abide the decision of law, our fortunes shall be protected, by the interposition of his prohibition, from the intolerable iniquity of the royal judges.[n] The process termed manifestation afforded as ample security for personal liberty as that of

anything about a transaction so remote in time, and in a foreign country, the native historians writing rather concisely.

l Bianc. p. 663. James acquired the surname of Just, el Justiciero, by his fair dealings towards his subjects. Zurita, t. ii. fol. 82. El Justiciero properly denotes his exercise of civil and criminal justice.

m Fueros de Aragon: Quod in dubiis non crassis. (A.D. 1348.) Quod impetrans (1372), &c. Zurita, t. ii. fol. 229. Bianc. pp. 671 and 811.

n p. 751. Fueros de Aragon, f. 137.

jurisfirma did for property. "To manifest any one," says the writer so often quoted, "is to wrest him from the hands of the royal officers, that he may not suffer any illegal violence; not that he is at liberty by this process, because the merits of his case are still to be inquired into; but because he is now detained publicly, instead of being as it were concealed, and the charge against him is investigated, not suddenly or with passion, but in calmness and according to law, therefore this is called manifestation." *o* The power of this writ (if I may apply

o Est apud nos manifestare, reum subito sumere, atque é regiis manibus extorquere, ne qua ipsi contra jus vis inferatur. Non quod tunc reus judicio liberetur; nihilominus tamen, ut loquimur, de meritis causæ ad plenum cognoscitur. Sed quod deinceps manifesto teneatur, quasi antea celatus extitisset; necesseque deinde sit de ipsius culpâ, non impetu et cum furore, sed sedatis prorsus animis, et juxta constitutas leges judicari. Ex eo autem, quod hujusmodi judicium manifesto deprehensum, omnibus jam patere debeat, Manifestationis sibi nomen arripuit. p. 675.

Ipsius Manifestationis potestas tam solida est et repentina, ut homini jam collum in laqueum inserenti subveniat. Illius enim præsidio, damnatus, dum per leges licet, quasi experiendi juris gratiâ, de manibus judicum confestim extorquetur, et in carcerem ducitur ad id ædificatum, ibidemque asservatur tamdiu, quamdiu jurene, an injuriâ, quid in eâ causâ factum fuerit, judicatur. Propterea carcer hic vulgari linguâ, la carcel de los manifestados nuncupatur. p. 751.

Fueros de Aragon, fol. 60. De Manifestationibus personarum. Independently of this right of manifestation by writ of the justiciary there are several statutes in the Fueros against illegal detention, or unnecessary severity towards prisoners. (De Custodiâ reorum, f. 163.) No judge could proceed secretly in a criminal process; an indispensable safeguard to public liberty, and one of the most salutary, as well as most ancient, provisions in our own constitution. (De judiciis.) Torture was abolished, except in cases of coining false money, and then only in respect of vagabonds. (General Privilege of 1283.)

Zurita has explained the two processes of jurisfirma and manifestation so perspicuously, that, as the subject is very interesting, and rather out of the common way, I shall both quote and translate the passage. Con firmar de derecho, que es dar caution á estar á justicia, se conseden literas inhibitorias por el justicia de Aragon, para que no puedan sur presos, ni privados, ni despojados de su possession, hasta que judicialmente se conozca, y declare sobre la pretension, y justicia de las partes, y parezca por processo legitimo, que se deve revocar la tal inhibition. Esta fué la suprema y principal autoridad del Justicia de Aragond esde que este magistrado tuvo origen, y lo que llama manifestation; porque assí como la firma de derecho por privilegio general del reyno impide, que no puede ninguno ser preso, ó agraviado contra razon y justicia, de la misma manera la manifestacion, que es otro privilegio, y remedia muy principal, tiene fuerca, quando alguno es preso sin preceder processo legitimo, ó quando lo prenden de hecho sin orden de justicia; y en estos casos solo el Justicia de Aragon, quando se tiene recurso al el, se interpone, manifestando il preso, que es tomarlo á su mano, de poder de qualquiera juez, aunque sea el mas supremo; y es obligado el Justicia de Aragon, y sus lugartenientes de proveer la manifestacion en el mismo instante, que les es pedida sin preceder informacion; y basta que se pida por qualquiere persona que se diga procurador del que quiere que lo tengan por manifesto. t. ii. fol. 386. "Upon a firma de derecho, which is to give security for abiding the decision of the law, the Justiciary of Aragon issues letters inhibiting all persons to arrest the party, or deprive him of his possession, until the matter shall be judicially inquired into, and it shall appear that such inhibition ought to be revoked. This process and that which is called manifestation have been the chief powers of the justiciary, ever since the commencement of that magistracy. And as the firma de derecho by the general privilege of the realm secures every man from being arrested or molested against reason and justice, so the manifestation, which is another principal and remedial right, takes place when any one is actually arrested without lawful process; and in such cases only the Justiciary of Aragon, when recourse is had to him, interposes by manifesting the person arrested, that is, by taking him into his own hands, out of the power of any judge, however high in authority; and this manifestation the justiciary, or his deputies in his absence, are bound to issue at the same instant it is demanded, without further inquiry; and it may be demanded by any one as attorney of the party requiring to be manifested."

our term) was such, as he elsewhere asserts, that it would rescue a man whose neck was in the halter. A particular prison was allotted to those detained for trial under this process.

Several proofs that such admirable provisions did not remain a dead letter in the law of Aragon appear in the two historians, Blancas and Zurita, whose noble attachment to liberties, of which they had either witnessed or might foretell the extinction, continually displays itself. I cannot help illustrating this subject by two remarkable instances. The heir apparent of the kingdom of Aragon had a constitutional right to the lieutenancy or regency during the sovereign's absence from the realm. The title and office indeed were permanent, though the functions must of course have been superseded during the personal exercise of royal authority. But as neither Catalonia nor Valencia, which often demanded the king's presence, were considered as parts of the kingdom, there were pretty frequent occasions for this anticipated reign of the eldest prince. Such a regulation was not likely to diminish the mutual and almost inevitable jealousies between kings and their heirs apparent, which have so often disturbed the tranquillity of a court and a nation. Peter IV. removed his eldest son, afterwards John I., from the lieutenancy of the kingdom. The prince entered into a firma del derecho before the justiciary, Dominic de Cerda, who, pronouncing in his favor, enjoined the king to replace his son in the lieutenancy as the undoubted right of the eldest born. Peter obeyed, not only in fact, to which, as Blancas observes, the law compelled him, but with apparent cheerfulness.[p] There are indeed no private persons who have so strong an interest in maintaining a free constitution and the civil liberties of their countrymen as the members of royal families, since none are so much exposed, in absolute governments, to the resentment and suspicion of a reigning monarch.

John I., who had experienced the protection of law in his weakness, had afterwards occasion to find it interposed against his power. This king had sent some citizens of Saragossa to prison without form of law. They applied to Juan de Cerda, the justiciary, for a manifestation. He issued his writ accordingly; nor, says Blancas, could he do otherwise without being subject to a heavy fine. The king, pretending

[p] Zurita, ubi supra. Blancas, p. 673.

that the justiciary was partial, named one of his own judges, the vice-chancellor, as coadjutor. This raised a constitutional question, whether, on suspicion of partiality, a coadjutor to the justiciary could be appointed. The king sent a private order to the justiciary not to proceed to sentence upon this interlocutory point until he should receive instructions in the council, to which he was directed to repair. But he instantly pronounced sentence in favor of his exclusive jurisdiction without a coadjutor. He then repaired to the palace. Here the vice-chancellor, in a long harangue, enjoined him to suspend sentence till he had heard the decision of the council. Juan de Cerda answered that, the case being clear, he had already pronounced upon it. This produced some expressions of anger from the king, who began to enter into an argument on the merits of the question. But the justiciary answered that, with all deference to his majesty, he was bound to defend his conduct before the cortes, and not elsewhere. On a subsequent day the king, having drawn the justiciary to his country palace on pretence of hunting, renewed the conversation with the assistance of his ally the vice-chancellor; but no impression was made on the venerable magistrate, whom John at length, though much pressed by his advisers to violent courses, dismissed with civility. The king was probably misled throughout this transaction, which I have thought fit to draw from obscurity, not only in order to illustrate the privilege of manifestation, but as exhibiting an instance of judicial firmness and integrity, to which, in the fourteenth century, no country perhaps in Europe could offer a parallel.[q]

Before the cortes of 1348 it seems as if the justiciary might have been displaced at the king's pleasure. From that time he held his station for life. But in order to evade this law, the king sometimes exacted a promise to resign upon request. Ximenes Cerdan, the justiciary in 1420, having refused to fulfil this engagement, Alfonso V. gave notice to all his subjects not to obey him, and, notwithstanding the alarm which this encroachment created, eventually succeeded in compelling him to quit his office. In 1439 Alfonso insisted with still greater severity upon the execution of a promise to resign made by another justiciary, detaining him in prison until his death. But the cortes of 1442 proposed a law, to which the king re-

[q] Biancæ Commentar. ubi supra. Zurita relates the story, but not so fully.

luctantly acceded, that the justiciary should not be compellable to resign his office on account of any previous engagement he might have made.[r]

But lest these high powers, imparted for the prevention of abuses, should themselves be abused, the justiciary was responsible, in case of an unjust sentence, to the extent of the injury inflicted;[s] and was also subjected, by a statute of 1390, to a court of inquiry, composed of four persons chosen by the king out of eight named by the cortes; whose office appears to have been that of examining and reporting to the four estates in cortes, by whom he was ultimately to be acquitted or condemned. This superintendence of the cortes, however, being thought dilatory and inconvenient, a court of seventeen persons was appointed in 1461 to hear complaints against the justiciary. Some alterations were afterwards made in this tribunal.[t] The justiciary was always a knight, chosen from the second order of nobility, the barons not being liable to personal punishment. He administered the coronation oath to the king and in the cortes of Aragon the justiciary acted as a sort of royal commissioner, opening or proroguing the assembly by the king's direction.

No laws could be enacted or repealed, nor any tax imposed, without the consent of the estates duly assembled.[u] Even as early as the reign of Peter II., in 1205, that prince having attempted to impose a general tallage, the nobility and commons united for the preservation of their franchises; and the tax was afterwards granted in part by the cortes.[v] It may easily be supposed that the Aragonese were not behind other nations in statutes to secure these privileges, which upon the whole appear to have been more respected than in any other monarchy.[w] The General Privilege of 1283 formed a sort of

[r] Fueros de Aragon, fol. 22; Zurita, t. iii. fol. 140, 255, 272; Bianc. Comment. p. 701.

[s] Fueros de Aragon, fol. 25.

[t] Blancas; Zurita, t. iii. fol. 321; t. iv. f. 103. These regulations were very acceptable to the nation. In fact, the justiza of Aragon had possessed much more unlimited powers than ought to be intrusted to any single magistrate. The Court of King's Bench in England, besides its consisting of four co-ordinate judges, is checked by the appellant jurisdictions of the Exchequer Chamber and House of Lords, and still more importantly by the rights of juries.

[u] Majores nostri, quæ de omnibus statuenda essent, noluerunt juberi, vetarive posse, nisi vocatis descriptisque ordinibus, ac cunctis eorum adhibitis suffragiis, re ipsâ cognitâ et promulgatâ. Unde perpetuum illud nobis comparatum est jus, ut communes et publicæ leges neque tolli, neque rogari possint, nisi prius universus populus una voce comitiis institutis suum eâ de re liberum suffragium ferat; idque postea ipsius regis assensu comprobetur. Biancæ, p. 761.

[v] Zurita, t. i. fol. 92.

[w] Fueros de Aragon: Quod sissæ in Aragoniâ removeantur. (A.D. 1372.) De prohibitione sissarum. (1398.) De conservatione patrimonii. (1461.) I have only remarked two instances of arbitrary taxation in Zurita's history, which

groundwork for this legislation, like the Great Charter in England. By a clause in this law, cortes were to be held every year at Saragossa. But under James II. their time of meeting was reduced to once in two years, and the place was left to the king's discretion.[x] Nor were the cortes of Aragon less vigilant than those of Castile in claiming a right to be consulted in all important deliberations of the executive power, or in remonstrating against abuses of government, or in superintending the proper expenditure of public money.[y] A variety of provisions, intended to secure these parliamentary privileges and the civil liberties of the subject, will be found dispersed in the collection of Aragonese laws,[z] which may be favorably compared with those of our own statute-book.

Four estates, or, as they were called, arms (brazos), formed the cortes of Aragon—the prelates and commanders of military orders, who passed for ecclesiastics;[a] the barons or ricos-hombres; the equestrian order or infanzones; and the deputies of royal towns.[b] The two former had a right of appearing by proxy. There was no representation of the infanzones, or lower nobility. But it must be remembered that they were

is singularly full of information; one, in 1343, when Peter IV. collected money from various cities, though not without opposition; and the other a remonstrance of the cortes in 1383 against heavy taxes; and it is not clear that this refers to general unauthorized taxation. Zurita, t. ii. f. 168 and 382. Blancas mentions that Alfonso V. set a tallage upon his towns for the marriage of his natural daughters, which he might have done had they been legitimate; but they appealed to the justiciary's tribunal, and the king receded from his demand. p. 701.

Some instances of tyrannical conduct in violation of the constitutional laws occur, as will naturally be supposed, in the annals of Zurita. The execution of Bernard Cabrera under Peter IV., t. ii. f. 336, and the severities inflicted on Queen Forcia by her son-in-law John I., f. 391, are perhaps as remarkable as any.

x Zurita, t. i. f. 426. In general the session lasted from four to six months. One assembly was prorogued from time to time, and continued six years, from 1446 to 1452, which was complained of as a violation of the law for their biennial renewal. t. iv. f. 6.

y The Sicilian war of Peter III. was very unpopular, because it had been undertaken without consent of the barons, contrary to the practice of the kingdom: porque ningun negocio arduo emprendian, sin acuerdo y consejo de sus ricoshombres. Zurita, t. i. fol. 264. The cortes, he tells us, were usually divided into two parties, whigs and tories; estava ordinariamente dividida en dos partas, la una que pensava procurar el beneficio del reyno, y la otra que le servicio del rey. t. iii. fol. 321.

z Fueros y observancias del reyno de Aragon. 2 vols. in fol. Saragossa, 1667. The most important of these are collected by Blancas, p. 750.

a It is said by some writers that the ecclesiastical arm was not added to the cortes of Aragon till about the year 1300. But I do not find mention in Zurita of any such constitutional change at that time; and the prelates, as we might expect from the analogy of other countries, appear as members of the national council long before. Queen Petronilla, in 1142, summoned á los perlados, ricoshombres, y cavalleros, y procuradores de las ciudades y villas, que le juntassen á cortes generales en la ciudad de Huesca. Zurita, t. i. fol. 71. So in the cortes of 1275, and on other occasions.

b Popular representation was more ancient in Aragon than in any other monarchy. The deputies of towns appear in the cortes of 1133, as Robertson has remarked from Zurita. Hist. of Charles V. note 32. And this cannot well be called in question, or treated as an anomaly; for we find them mentioned in 1142 (the passage cited in the last note), and again in 1164, when Zurita enumerates many of their names. fol. 74. The institution of consejos, or corporate districts under a presiding town, prevailed in Aragon as it did in Castile.

not numerous, nor was the kingdom large. Thirty-five are reckoned by Zurita as present in the cortes of 1395, and thirty-three in those of 1412; and as upon both occasions an oath of fealty to a new monarch was to be taken, I presume that nearly all the nobility of the kingdom were present.[c] The ricos-hombres do not seem to have exceeded twelve or fourteen in number. The ecclesiastical state was not much, if at all, more numerous. A few principal towns alone sent deputies to the cortes; but their representation was very full; eight or ten, and sometimes more, sat for Saragossa, and no town appears to have had less than four representatives. During the interval of the cortes a permanent commission, varying a good deal as to numbers, but chosen out of the four estates, was empowered to sit with very considerable authority, receiving and managing the public revenue, and protecting the justiciary in his functions.[d]

The kingdom of Valencia, and principality of Catalonia, having been annexed to Aragon, the one by conquest, the other by marriage, were always kept distinct from it in their laws and government. Each had its cortes, composed of three estates, for the division of the nobility into two orders did not exist in either country. The Catalans were tenacious of their ancient usages, and averse to incorporation with any other people of Spain. Their national character was high-spirited and independent; in no part of the peninsula did the territorial aristocracy retain, or at least pretend to, such extensive privileges,[e] and the citizens were justly proud of wealth acquired by industry, and of renown achieved by valor. At the accession of Ferdinand I., which they had not much desired, the Catalans obliged him to swear three times successively to maintain their liberties, before they would take the reciprocal oath of allegiance[f] For Valencia it seems to have been a politic design of James the Conqueror to establish a constitution nearly analogous to that of Aragon, but with such limitations as he should impose, taking care that the nobles of the two kingdoms should not acquire strength by union. In the reigns of Peter III. and Alfonso III., one of the principal objects contended for by the barons of Aragon was the establishment of their own laws in Valencia; to which the kings never acceded.[g] They per-

c Zurita, t. ii. f. 490; t. iii. f. 76.

d Biancæ, p. 762; Zurita, t. iii. f. 76, f. 182 et alibi.

e Zurita, t. ii. f. 360. The villenage of the peasantry in some parts of Catalonia was very severe, even near the end of the fifteenth century. t. iv. f. 327.

f Id., t. iii. f. 81.

g Id., t. i. f. 281, 310, 333. There was

mitted, however, the possessions of the natives of Aragon in the latter kingdom to be governed by the law of Aragon.[h] These three states, Aragon, Valencia, and Catalonia, were perpetually united by a law of Alfonso III.; and every king on his accession was bound to swear that he would never separate them.[i] Sometimes general cortes of the kingdoms and principality were convened; but the members did not, even in this case, sit together, and were not otherwise united than as they met in the same city.[j]

I do not mean to represent the actual condition of society in Aragon as equally excellent with the constitutional laws. Relatively to other monarchies, as I have already observed, there seem to have been fewer excesses of the royal prerogative in that kingdom. But the licentious habits of a feudal aristocracy prevailed very long. We find in history instances of private war between the great families, so as to disturb the peace of the whole nation, even near the close of the fifteenth century.[k] The right of avenging injuries by arms, and the ceremony of diffidation, or solemn defiance of an enemy, are preserved by the laws. We even met with the ancient barbarous usage of paying a composition to the kindred of a murdered man.[l] The citizens of Saragossa were sometimes turbulent, and a refractory nobleman sometimes defied the ministers of justice. But owing to the remarkable copiousness of the principal Aragonese historian, we find more frequent details of this nature than in the scantier annals of some countries. The internal condition of society was certainly far from peaceable in other parts of Europe.

By the marriage of Ferdinand with Isabella, and by the death of John II., in 1479, the two ancient and rival kingdoms of Castile and Aragon were forever consolidated in the monarchy of Spain. There had been some difficulty in adjusting the respective rights of the husband and wife over Castile. In the middle ages it was customary for the more powerful sex to exercise all the rights which it derived from the weaker, as much in sovereignties as in private possessions. But the Castilians were determined to maintain the positive and distinct prerogatives of their queen, to which they attached the independence of their nation. A compromise therefore was con-

originally a justiciary in the kingdom of Valencia, f. 281; but this, I believe, did not long continue.

h Zurita, t. ii. f. 433.

i t. ii. f. 91.

j Biancæ, Comment. p. 760; Zurita, t. iii. fol. 239.

k Ibid., t. iv. fol. 189.

l Fueros de Aragon, f. 1660, &c.

cluded, by which, though, according to our notions, Ferdinand obtained more than a due share, he might consider himself as more strictly limited than his father had been in Navarre. The names of both were to appear jointly in their style and upon the coin, the king's taking the precedence in respect of his sex. But in the royal scutcheon the arms of Castile were preferred on account of the kingdom's dignity. Isabella had the appointment to all civil offices in Castile; the nomination to spiritual benefices ran in the name of both. The government was to be conducted by the two conjointly when they were together, or by either singly in the province where one or other might happen to reside.[m] This partition was well preserved throughout the life of Isabel without mutual encroachments or jealousies. So rare a unanimity between persons thus circumstanced must be attributed to the superior qualities of that princess, who, while she maintained a constant good understanding with a very ambitious husband, never relaxed in the exercise of her paternal authority over the kingdoms of her ancestors.

Ferdinand and Isabella had no sooner quenched the flames of civil discord in Castile than they determined to give an unequivocal proof to Europe of the vigor which the Spanish monarchy was to display under their government. For many years an armistice with the Moors of Granada had been uninterrupted. Neither John II. nor Henry IV. had been at leisure to think of aggressive hostilities; and the Moors themselves, a prey, like their Christian enemies, to civil war and the feuds of their royal family, were content with the unmolested enjoyment of the finest province in the peninsula. If we may trust historians, the sovereigns of Granada were generally usurpers and tyrants. But I know not how to account for that vast populousness, that grandeur and magnificence, which distinguished the Mohammedan kingdom of Spain, without ascribing some measure of wisdom and beneficence to their governments. These southern provinces have dwindled in later times; and in fact Spain itself is chiefly interesting to many travellers for the monuments which a foreign and odious race of conquerors have left behind them. Granada was, however, disturbed by a series of revolutions about the time of Ferdinand's accession, which naturally encouraged his designs. The Moors, contrary to what might have been expected from their relative strength,

[m] Zurita, t. iv. fol. 224; Mariana, l. xxiv. c. 5.

were the aggressors by attacking a town in Andalusia.[n] Predatory inroads of this nature had hitherto been only retaliated by the Christians. But Ferdinand was conscious that his resources extended to the conquest of Granada, the consummation of a struggle protracted through nearly eight centuries. Even in the last stage of the Moorish dominion, exposed on every side to invasion, enfeebled by civil dissension that led one party to abet the common enemy, Granada was not subdued without ten years of sanguinary and unremitting contest. Fertile beyond all the rest of Spain, that kingdom contained seventy walled towns; and the capital is said, almost two centuries before, to have been peopled by 200,000 inhabitants.[o] Its resistance to such a force as that of Ferdinand is perhaps the best justification of the apparent negligence of earlier monarchs. But Granada was ultimately to undergo the yoke. The city surrendered on the 2nd of January, 1492—an event glorious not only to Spain but to Christendom—and which, in the political combat of the two religions, seemed almost to counterbalance the loss of Constantinople. It raised the name of Ferdinand and of the new monarchy which he governed to high estimation throughout Europe. Spain appeared an equal competitor with France in the lists of ambition. These great kingdoms had for some time felt the jealousy natural to emulous neighbors. The house of Aragon loudly complained of the treacherous policy of Louis XI. He had fomented the troubles of Castile, and given, not indeed an effectual aid, but all promises of support, to the princess Joanna, the competitor of Isabel. Rousillon, a province belonging to Aragon, had been pledged to France by John II. for a sum of money. It would be tedious to relate the subsequent events, or to discuss their respective claims to its possession.[p] At the accession of Ferdinand, Louis XI. still held Rousillon, and showed little intention to resign it. But Charles VIII., eager to smooth every impediment to his Italian expedition, restored the province to Ferdinand in 1493. Whether by such a sacrifice he was able to lull the king of Aragon into acquiescence, while he dethroned his relation at Naples, and alarmed for a moment all Italy with the apprehension of French dominion, it is not within the limits of the present work to inquire.

n Zurita, t. iv. fol. 314.
o Ibid., t. iv. fol. 314.
p For these transactions see Garnier, Hist. de France, or Gaillard, Rivalité de France et d'Espagne, t. iii. The latter is the most impartial French writer I have ever read, in matters where his own country is concerned.

NOTE TO BOOK IV.

Note.

The story of Cava, daughter of Count Julian, whose seduction by Roderic, the last Gothic king, impelled her father to invite the Moors into Spain, enters largely into the cycle of Castilian romance and into the grave narratives of every historian. It cannot, however, be traced in extant writings higher than the eleventh century, when it appears in the Chronicle of the Monk of Silos. There are Spanish historians of the eighth and ninth centuries; in the former, Isidore Bishop of Beja (Pacensis), who wrote a chronicle of Spain; in the latter, Paulus Diaconus of Merida, Sebastian of Salamanca, and an anonymous chronicler. It does not appear, however, that these dwell much on Roderic's reign. (See Masdeu, Historia Critica de España, vol. xiii. p. 882.) The most critical investigators of history, therefore, have treated the story as too apocryphal to be stated as a fact. A sensible writer in the History of Spain and Portugal, published by the Society for the Diffusion of Useful Knowledge, has defended its probability, quoting a passage from Ferreras, a Spanish writer of the eighteenth century, whose authority stands high, and who argues in favor of the tradition from the brevity of the old chroniclers who relate the fall of Spain, and from the want of likelihood that Julian, who had hitherto defended his country with great valor, would have invited the Saracens, except through some strong motives. This, if we are satisfied as to the last fact, appears plausible; but another hypothesis has been suggested, and is even mentioned by one of the early writers, that Julian, being of Roman descent, was ill-affected to the Gothic dynasty, who had never attached to themselves the native inhabitants. This I cannot but reckon the less likely explanation of the two. Roderic, who became archbishop of Toledo in 1208, and our earliest authority after the Monk of Silos, calls Julian "vir nobilis de nobili Gothorum prosapia ortus, illustris in officio Palatino, in armis exercitatus," &c. (See Schottus, Hispania Illustrata, ii. 63.) Few, however, of those who deny the truth of the story as it relates to Cava admit the defection of Count Julian to the Moors, and his existence has been doubted. The two parts of the story cohere together, and we have no better evidence for one than for the other.

Southey, in his notes to the poem of Roderic, says, "The best Spanish historians and antiquaries are persuaded that there is no cause for disbelieving the uniform and concurrent tradition of both Moors and Christians." But this is on the usual assumption, that those are the best who agree best with ourselves. Southey took generally the credulous side, and his critical judgment is of no superlative value. Masdeu, in learning and laboriousness the first Spanish antiquary, calls the story of Julian's daughter "a ridiculous tale, framed in the age of romance, when histories were thrust aside (arrinconadas) and any love-tale was preferred to the most serious truth." (Hist. Crit. de España, vol. x. p. 223.) And when, in another passage (vol. xii. p. 6), he recounts the story at large, he says that the silence of all writers before the monk of Silos "should be sufficient in my opinion to expel from our history a romance so destitute of foundation, which the Arabian romancers doubtless invented for their ballads."

A modern writer of extensive learning says, "This fable, which has found its way into most of the sober histories of Spain, was first introduced by the monk of Silos, a chronicler of the eleventh century. There can be no doubt that he borrowed it from the Arabs, but it seems hard

to believe that it was altogether a tale of their invention. There are facts in it which an Arab could not have invented, unless he drew them from Christian sources; and, as I shall show hereafter, the Arabs knew and consulted the writings of the Christians." (Gayangos, History of the Mohammedan Dynasties of Spain, vol. i. p. 513.) It does not appear to be a conclusion from this passage that the story is a fable. For if a chronicler of the eleventh century borrowed it from the Arabs, and they again from Christian sources, we get over a good deal of the chasm of time. But if writers antecedent to the monk of Silos have related the Arabian invasion and the fall of Roderic without alluding to so important a point as the treachery of a great Gothic noble, it seems difficult to resist the inference from their silence.

Gayangos investigates in a learned note (vol. i. p. 537) the following points:—By whom and when was the name of Ilyan, the Arabic form of Julian, first introduced into Spanish history? Did such a man ever exist? What were his country and religion? Was he an independent prince, or a tributary to the Gothic monarchs? What part did he take in the conquest of Spain by the Arabs?

The account of Julian in the Chronicon Silense appears to Gayangos indisputably borrowed from some Arabian authority; and this he proves by several writers from the ninth century downwards, "all of whom mention, more or less explicitly, the existence of a man living in Africa, and named Ilyan, who helped the Arabs to make a conquest of Spain; to which I ought to add that the rape of Ilyan's daughter, and the circumstances attending it, may also be read in detail in the Mohammedan authors who preceded the monk of Silos." The result of this learned writer's investigation is, that Ilyan really existed, that he was a Christian chief, settled, not in Spain, but on the African coast, and that he betrayed, not his country (except indeed as he was probably of Spanish descent), but the interests of his religion, by assisting the Saracens to subjugate the Gothic kingdom.[a]

The story of Cava is not absolutely overthrown by this hypothesis, though it certainly may be the invention of some Christian or Arabian romancer. It is perfectly true that of itself it contains no apparent improbability. Injuries have been thus inflicted by kings, and thus resented by subjects. But for this very reason it was likely to be invented; and the unwillingness with which many seem to surrender so romantic a tale attests the probability of its obtaining currency in an uncritical period. We must reject it as false or not, according as we lay stress on the negative argument from the silence of very early writers (an argument, strong even as it is, and which would be insuperable if they were less brief and imperfect) and on the presumptions adduced by Gayangos that Julian was not a noble Spaniard; but we cannot receive this celebrated legend at any rate with more than a very sceptical assent, not sufficient to warrant us in placing it among the authenic facts of history.

a The Arabian writer whom Gayangos translates, one of late date, speaks of Ilyan as governor of Ceuta, but tells the story of Cava in the usual manner. The Goths may very probably have possessed some of the African coast; so that the residence of Julian on that side of the straits would not be incompatible with his being truly a Spaniard. Ilyan is evidently not a European form of the name.

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